

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

QSL CORPORATION d/b/a
WAXCESSORIES and
CKQ DESIGNS, INC.,

Plaintiffs,

v.

FIGI ACQUISITION COMPANY, LLC,

Defendant.

Infringement; and (2) Declaratory Relief of Non-Infringement of Trade Dress.

4. Attached hereto as Exhibit "B" is a true and correct copy of a First Amended Complaint filed on February 2, 2005 in the U. S. District Court, Southern District of California on behalf of Plaintiff FIGI and against Defendants QSL CORPORATION, INC., CKO DESIGNS, INC., and KEVIN J. QUINN.¹ This First Amended Complaint alleges causes of action for: (1) Declaratory Relief of Patent Invalidity and Non-Infringement; and (2) Declaratory Relief of Non-Infringement of Trade Dress.

5. Attached hereto as Exhibit "C" is a true and correct copy of my letter dated February 4, 2005, setting forth the terms under which the above-referenced First Amended Complaint was served upon the Defendants in the California Federal District Court action. Essentially, I served the First Amended Complaint pursuant to Federal Rule of Civil Procedure Rule 4 in that the First Amended Complaint was presented along with a Waiver and Acknowledgment of Service.


6. Attached hereto as Exhibit "D" is a true and correct copy of a Complaint filed in the U. S. District Court, District of Massachusetts on "February 29, 2005". It is believed that this Complaint was actually filed on March 1, 2005, as 2005 is not a leap year. In any event, this Complaint was served on March 2, 2005. The Complaint was filed by QSL CORPORATION d/b/a WAXCESSORIES and CKQ DESIGNS, INC. as Plaintiffs against Defendant FIGI. It alleges causes of action for patent infringement involving ceramic Cell Phone Holders. These are the same Cell Phone Holders that are the subject of the related California federal action

¹ KEVIN J. QUINN was subsequently dismissed.

referenced above and this places in issue the same facts and law as the California federal action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

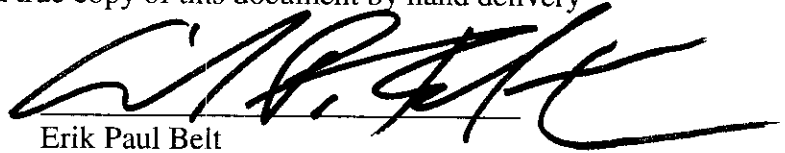
Executed this 8th day of March, 2005 at San Diego, CA.



PETER J. SCHULZ, ESQ., DECLARANT

CERTIFICATE OF SERVICE

I certify that, on March 9, 2005, I served a true copy of this document by hand delivery on counsel for each other party.



Erik Paul Belt

ORIGINAL

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FIGI ACQUISITION COMPANY, LLC, a Delaware
Limited Liability Company,

vs

QSL CORPORATION, INC., a Massachusetts
Corporation,

SUMMONS IN A CIVIL ACTION

Case No.

'04 CV 2579 JM (AJB)

TO: (Name and Address of Defendant)

QSL CORPORATION, INC.

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon
PLAINTIFF'S ATTORNEY

Peter J. Schulz, Esquire
GRECO TRAFICANTE & EDWARDS
555 West Beech Street, Ste. 500
San Diego, CA 92101
Tel: (619) 234-3660/Fax: (619) 234-0646

An answer to the complaint which is herewith served upon you, within twenty (20) days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by
default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK

12/28/04

DATE

By

, Deputy Clerk

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FIGI ACQUISITION COMPANY, LLC, a Delaware
Limited Liability Company,

vs

QSL CORPORATION, INC., a Massachusetts
Corporation,

SUMMONS IN A CIVIL ACTION

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default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK
ALVA VICTORIA

DEC 28 2004

DATE

By _____, Deputy Clerk

Peter J. Schulz, Esquire, State Bar No. 167646
LAW OFFICES

GRECO TRAFICANTE & EDWARDS

555 WEST BEECH STREET, SUITE 500
SAN DIEGO, CALIFORNIA 92101
(619) 234-3660/FAX: (619) 234-0626

FILED

04 DEC 28 PM 3:49

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiff FIGI ACQUISITION, LLC

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FIGI ACQUISITION COMPANY, LLC, a) Civil Action No.
Delaware Limited Liability)
Company,)

'04 CV 2579 JM (AJB)

Plaintiff,

COMPLAINT FOR:

vs.

- 1) **DECLARATORY RELIEF OF
PATENT INVALIDITY AND
NONINFRINGEMENT; AND**
- 2) **DECLARATORY RELIEF OF NON-
INFRINGEMENT OF TRADE
DRESS**

QSL CORPORATION, INC., a)
Massachusetts Corporation,)

Defendant.)

Plaintiff, FIGI ACQUISITION COMPANY, LLC, alleges as follows:

THE PARTIES

1. Plaintiff FIGI ACQUISITION COMPANY, LLC, (hereinafter "FIGI") is a Delaware Limited Liability Company, doing business in the State of California, with its principal place of business located within the State of California.

2. QSL CORPORATION, (hereinafter "QSL") is a corporation, incorporated under the laws of the State of Massachusetts, with its principal place of business located within the State of Massachusetts.

JURISDICTION AND VENUE

3. This is an action seeking declaratory relief regarding the validity of an alleged United States Patent as well as declaration of noninfringement of an alleged United States Patent. As such, the claims herein alleged, and described more fully herein, arise under federal law and involve federal questions as to each parties' rights and available remedies, pursuant to the Acts of Congress relating to patents. Jurisdiction therefore exists pursuant to 28 U.S.C. § 1338(a)-(b).

4. Personal jurisdiction and venue in the United States District Court for the Southern District of California are proper, as both Plaintiff and Defendant conduct business in the Southern District of California.

FACTUAL ALLEGATIONS

5. Plaintiff designs, manufactures, and distributes a product line known as Ceramic Cell Phone Holders. Ceramic Cell Phone Holders are decorative ceramic art with the functional capacity of being able to hold a cell phone with an opening below, which allows for the charger cord of the phone to go unseen and still provide charging features for the phone. The decorative holders are similar in shape to cell phone "base chargers" offered by the many manufacturers of cell phones, but are intended to be more decorative. Pictures of Plaintiff's Ceramic Cell Phone Holders from Plaintiff's catalog are attached hereto as **Exhibit 1**.

6. QSL allegedly designs and markets ceramic accessories, including ceramic cell phone holders marketed under the name PHONE WHERE. A photocopy provided to Plaintiff by counsel for QSL,

1 depicting its generic, non-decorative ceramic cell phone holder,
2 is attached hereto as **Exhibit 2**.

3 7. QSL has alleged that it has applied for a U.S. Patent on
4 the product, and the purported application has been allowed.
5 Notwithstanding Plaintiff's request for information, QSL has
6 refused to provide any information about the alleged patent,
7 including the application serial number, and/or whether it was a
8 design patent or a utility patent.

9 8. On November 17, 2004, Defendant sent a cease-and-desist
10 letter to Plaintiff regarding its sales of its Ceramic Cell Phone
11 Holders. Defendant based this demand to cease and desist on its
12 claim of trade dress protection over the shape of the cell phone
13 holder, along with unspecified patent protection over the cell
14 phone holder's design and/or utility. A copy of defendant's
15 cease-and-desist letter is attached hereto as **Exhibit 3**.

16 9. On November 19, 2004, Plaintiff responded to Defendant's
17 cease-and-desist demand on the basis that Defendant had not
18 provided any evidence of ownership of protectable intellectual
19 property rights, or any useful information that would allow
20 Plaintiff to analyze the demand. A copy of Plaintiff's 11/19/04
21 letter is attached hereto as **Exhibit 4**. Further information was
22 again requested on November 30, 2004. See **Exhibit 5**.

23 10. On December 6, 2004, Defendant responded by continuing
24 to assert trade dress rights and unspecified patent protection
25 without providing any further information, and advised Plaintiff
26 that its continued sales would be "at its peril." A true and
27 correct copy of Defendant's December 6, 2004, letter is attached
28

1 hereto as **Exhibit 6**.

2 11. In light of Defendant's unspecified allegations of trade
3 dress and patent infringement, and threat of litigation, Plaintiff
4 requires a judicial declaration from this Court that its Ceramic
5 Cell Phone Holders do not infringe any intellectual property
6 rights of Defendant.

7 **ACTUAL CONTROVERSY**

8 12. An actual controversy has arisen and now exists between
9 the parties as to: (a) the validity of QSL's alleged U.S. Patent;
10 (b) whether Plaintiff has infringed QSL's alleged U.S. Patent; (c)
11 the validity of QSL's alleged trade dress over the shape of its
12 ceramic cell phone holder; and (d) whether Plaintiff has infringed
13 QSL's alleged trade dress.

14 13. Accordingly, Plaintiff desires a judicial declaration by
15 this Court as to each parties' rights.

16 14. A declaratory judgment is necessary in that Plaintiff
17 contends, and Defendant denies, that: (a) the alleged U.S. Patent
18 is invalid; (b) Plaintiff's product does not infringe any U.S.
19 Patent; (c) QSL does not own protectable trade dress over the
20 shape of its ceramic cell phone holder; and (d) Plaintiff has not
21 infringed any trade dress rights of QSL.

22 **PRAYER FOR DECLARATORY JUDGMENT**

23 WHEREFORE, Plaintiff prays for a declaratory judgment against
24 Defendant as follows:

- 25 1. That QSL's alleged U.S. Patent is invalid;
26 2. That Plaintiff has not, nor has it ever sold any product
27 that infringes QSL's alleged U.S. Patent;

1 3. That the shape of QSL's ceramic cell phone holder is not
2 protectable trade dress;

3 4. That Plaintiff has not infringed QSL's alleged trade
4 dress;

5 5. That Plaintiff be awarded its costs, expenses, and if
6 provided for by law, its attorney's fees; and

7 4. For such other and further relief as the Court deems
8 just and proper.

9 DATED: December 28, 2004

Respectfully submitted,

10 GRECO TRAFICANTE & EDWARDS

11
12 By: 

13 Peter J. Schulz, Esquire
14 Attorneys for Plaintiff
15 FIGI ACQUISITION, LLC
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27 F:\FIGI\FIG068\Pleadings\Complaint.wpd

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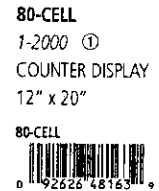
Exhibit 1

Ceramic Cell Phone Holders

CEL-E4D: 30 PC. CELL PHONE HOLDER PROGRAM WITH COUNTER DISPLAY — \$170.00
 CONSISTS OF 3 EACH OF 10 STYLES PLUS DISPLAY, INCLUDING 3 CAT CELL PHONE HOLDERS @ NO CHARGE.
 (Western sold separately)



Each Ceramic Cell Phone Holder comes packaged in a Figi box with photo label.



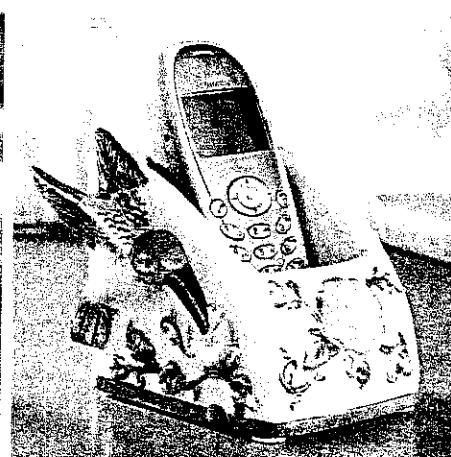
A CEL-ROS-101
 3-500 ③
 ROSES - Ceramic
 2.75" x 4.75" x 3.75"



B CEL-BTF-101
 3-500 ③
 BUTTERFLIES - Ceramic
 2.75" x 4.75" x 3.75"



C CEL-HBD-101
 3-500 ③
 HUMMINGBIRD - Ceramic
 2.75" x 4.75" x 3.75"



CALL TOLL FREE: 800-678-FIGI www.figi.net

D CEL-SLG-101

3-500 ③

LIGHTHOUSE - Ceramic
2.75" x 4.75" x 3.75"

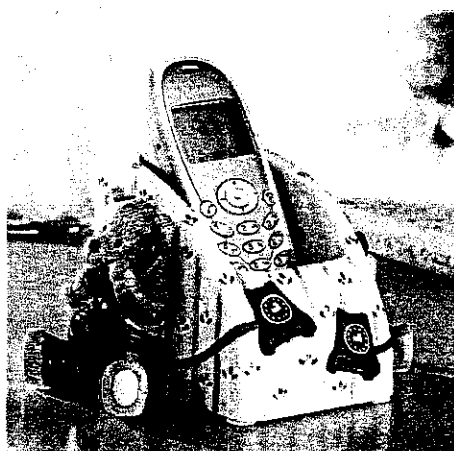
CEL-SLG-101

**H** CEL-TBR-101

3-500 ③

TALKING TEDDYBEARS - Ceramic
2.75" x 4.75" x 3.75"

CEL-TBR-101

**E** CEL-CAT-102

3-500 ③ ★★

CAT - Ceramic
2.75" x 4.75" x 3.75"

CEL-CAT-102

**I** CEL-VIN-101

3-500 ③

VINEYARD WINE - Ceramic
2.75" x 4.75" x 3.75"

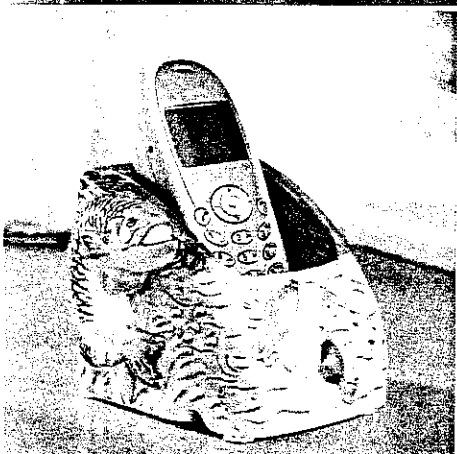
CEL-VIN-101

**F** CEL-FSH-101

3-500 ③

FISHING - Ceramic
2.75" x 4.75" x 3.75"

CEL-FSH-101

**J** CEL-GLF-101

3-500 ③

GOLF - Ceramic
2.75" x 4.75" x 3.75"

CEL-GLF-101

**G** CEL-TRP-101

3-500 ③

TROPICAL - Ceramic
2.75" x 4.75" x 3.75"

CEL-TRP-101



Western sold separately

K CEL-WST-101

3-500

WESTERN - Ceramic
2.75" x 4.75" x 3.75"
Western sold
separately.

CEL-WST-101

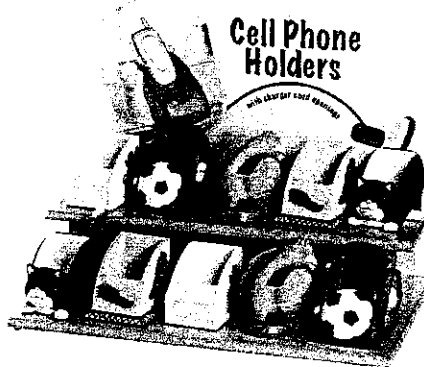


Resin Cell Phone Holders

CELR-ASD: 15 PC. RESIN CELL PHONE HOLDER PROGRAM
WITH COUNTER DISPLAY — \$95.00
CONSISTS OF 3 EACH OF 5 STYLES PLUS DISPLAY, INCLUDING
3 CAT CELL PHONE HOLDERS @ NO CHARGE.
(Western sold separately)



80-CELL
1-2000 ①
COUNTER DISPLAY
12" x 20"



A CEL-CAT-103
3-500 ③ ★★
CAT
4.5" x 3" x 6"
CEL-CAT-103



Each Ceramic Cell
Phone Holder comes
packaged in a Figi box
with photo label.

B CEL-CHR-101
3-500 ③
CHERRIES
3.25" x 2.75" x 3.75"
CEL-CHR-101



C CEL-FLM-101
3-500 ③
FLAMINGO
4.5" x 3.5" x 4.5"
CEL-FLM-101



D CEL-SPR-101
3-500 ③
ALL SPORT
4" x 4" x 4.25"
CEL-SPR-101



E CEL-SWT-101
3-500 ③
SOUTHWEST
3.5" x 3.25" x 4.25"
CEL-SWT-101



Western sold separately



F CEL-WST-102
3-500
WESTERN
3.25" x 3" x 3.5"
Western sold
separately.
CEL-WST-102

CALL TOLL FREE: 800-678-FIGI www.figi.net

CELL PHONE HOLDERS

Exhibit 2

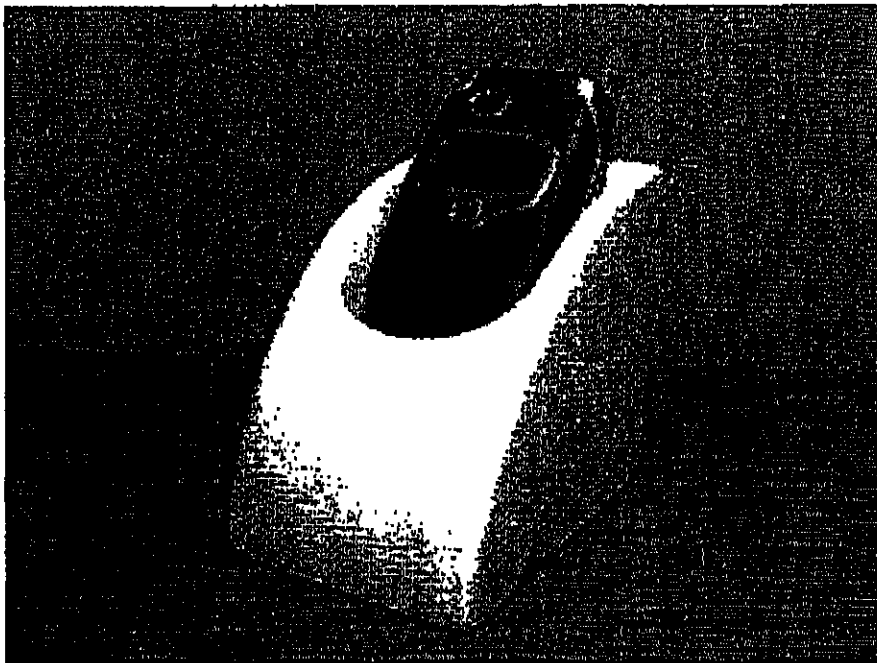


Exhibit 3



**FOLEY
HOAG** LLP
ATTORNEYS AT LAW

Fax

Date: November 17, 2004

To: Figi, Inc.

Fax #: 618-262-3508

Confirm#: 800-678-3444

Client Matter#: 23424-800

From: John L. Welch

Sender's Number: 617-832-1258

User #: 7242

Total Pages Sent (including Cover Sheet): 5

Office: Boston

Message

IMPORTANT - PLEASE READ

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION PLEASE TELEPHONE THE SENDER.

Seaport World Trade Center West | 165 Seaport Blvd. / Boston, MA 02210-2600 / TEL: 617.832.1000 / FAX: 617.832.7000
Foley Hoag LLP BOSTON WASHINGTON, DC www.foleyhoag.com





**FOLEY
HOAG LLP**
ATTORNEYS AT LAW

John L. Welch
Counsel
Boston Office
617/832-1258
jwelch@foleyhoag.com

November 17, 2004

Figi, LLC
3636 Gateway Center Avenue
San Diego, CA 92102

Re: Ceramic Cell Phone Holders


Dear Sir or Madam:

This firm serves as intellectual property counsel to QSL Corporation of Dracut, Massachusetts. QSL designs and markets ceramic candle accessories and other household products, under the names WAXCESSORIES and INSIGHTS. Among the products that it created and now sells is a ceramic cell phone holder marketed under the trademark PHONE WHERE. A photograph of its product is enclosed.

It has just come to our attention that your company is offering for sale cell phone holders that are undoubtedly copied from our client's proprietary PHONE WHERE design. Several of the many variations of your company's product are depicted in the attached photographs. Our client is the owner of trademark rights in the overall shape of its cell phone holder, and furthermore will be receiving patent protection on its product in the near future.

We strongly urge your company to immediately cease and desist from all further sales of the copied cell phone holder, and to confirm same in writing. We look forward to your prompt response.

Yours very truly,


John L. Welch

JLW/jw
enclosures

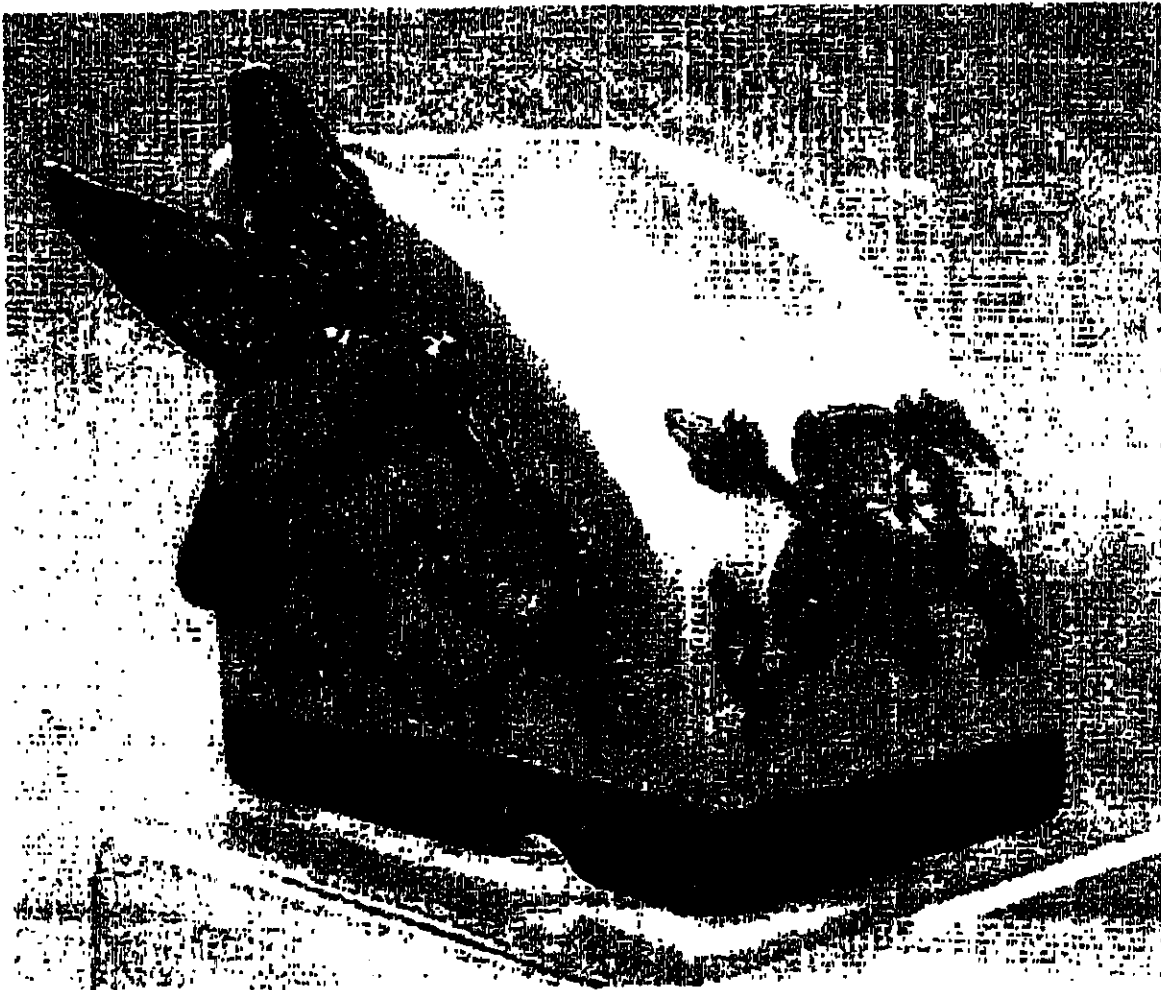




Exhibit 4

Case 1:05-cv-10395-NG
Clyde C. Greco, Jr.
Paul A. Traficante
Michael M. Edwards
Peter J. Schulz
Jon S. Brick

Philip M. McKenney
Scott B. Hilberg
Stephen F. Yurcich
Craig A. Weeber
Bay Baniadam
Laleaque Grad*
Brandy P. Tyler
Christopher D. Shurland

*Also Admitted in Arizona & Nevada

Document 11-3 Filed 03/09/2005
Law Offices
GRECO TRAFICANTE & EDWARDS
A Professional Corporation
555 West Beech Street, Suite 500
San Diego, CA 92101

Northern California Office
1415 Court Street
Redding, CA 96001

Page 6 of 14
Of Counsel
Stanley J. Wezelman
Phillip H. Howard
Legal Administrator
Lisa M. Class

Telephone
(619) 234-3660
Facsimile
(619) 234-0626

www.gtclaw.com
email: info@gtclaw.com

November 19, 2004

Via Facsimile & Mail

John L. Welch, Esquire
FOLEY & HOAG, LLP
Seaport World Trade Center West
155 Seaport Blvd.
Boston, MA 02210-2600

Re: OSL CORPORATION v. FIGI, LLC
Ceramic Cell Phone Holders
Our File No.: FIG-068

Dear Mr. Welch:

The undersigned serves as legal counsel to Figi, LLC. Please direct all future communications regarding the above referenced matter to my attention.

I am in receipt of your letter dated November 17, 2004. First of all, I am unable to tell from your letter exactly what intellectual property rights you are claiming. Your letter refers to the trademark PHONE WHERE. However, Figi does not use that term in any way, shape or form in connection with its products. Therefore, you have no trademark infringement claim arising out of your pending trademark for that term.

Second, you claim that you have a patent application pending for this cell phone holder product. Please provide me with the patent number, and any and all correspondence or applications for that patent protection, as we seriously question the validity of any such patent.

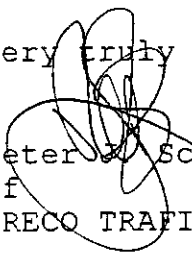
Third, you fail to set forth any information to support a claim for copyright infringement, or any other infringement of intellectual property rights because you have not provided any

John L. Welch, Esquire
FOLEY & HOAG, LLP
November 19, 2004
Page 2

evidence that you own any enforceable intellectual property rights. To the extent you have any copyright registrations, please forward those to my attention as well, or, at least, please provide me with your date of first publication of this particular product and evidence of same.

Based upon the foregoing, we view your demand for cease and desist as completely lacking in merit and substance. As such, we respectfully reject any and all demands contained within your November 17, 2004, letter. If you have any evidence you believe may cause us to reconsider that position, please forward that information to my attention forthwith. In the meantime, we reserve all rights, and waive none.

Very truly yours,


Peter J. Schulz
Of
GRECO TRAFICANTE & EDWARDS

PJS:nrs

cc: Clyde C. Greco, Jr., Esquire (via fax & mail)
Mark Ellis, President and CEO, Figi, LLC (via fax & mail)

Exhibit 5

Clyde C. Greco, Jr.
Paul A. Traficante
Michael M. Edwards
Peter J. Schulz
Jon S. Brick

Philip M. McKenney
Scott B. Hilberg
Stephen F. Yurcich
Craig A. Weeber
Bay Baniadam
Laleaque Grad*
Brandy P. Tyler
Christopher D. Shurland

Law Offices
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Northern California Office
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Of Counsel
Stanley J. Wezelman
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www.gtclaw.com
email: info@gtclaw.com

*Also Admitted in Arizona & Nevada

November 30, 2004

Via Facsimile & Mail

John L. Welch, Esquire
FOLEY & HOAG, LLP
Seaport World Trade Center West
155 Seaport Blvd.
Boston, MA 92210-2600

Re: OSL CORPORATION v. FIGI, LLC
Ceramic Cell Phone Holders
Our File No.: FIG-068

Dear Mr. Welch:

I am in receipt of your letter dated November 24, 2004. Thank you for clarifying that QSL Corporation is not asserting any claims for copyright infringement or infringement of QSL's PHONE WHERE trademark.

As I appreciate your allegation, QSL is claiming trade dress protection for the overall shape of its cell phone holder. However, QSL fails to present any evidence to support ownership of any such enforceable trade dress rights. For example, what is the date of creation? How was it created? What evidence of secondary meaning exists? What is it about the product that is non-functional and protectable? The cell phone holder which was pictured in your November 17, 2004, letter is generic and purely functional. In fact, review of your client's item side by side with our client's item suggests that the only possible similarities deal with the functional aspects of the product, and the overall shape and appearance of the two products are completely different.

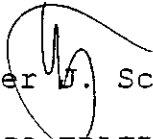
With respect to your alleged pending patent application, which you state has been allowed, and will soon issue, we again request that you provide us with the application serial number. As I am sure you are aware, even if you were to pursue litigation

John L. Welch, Esquire
November 30, 2004
Page 2

against our client regarding patent infringement, you would not be able to seek any damages based on continued sale of the product after notice of the allowance of the patent without providing us with the allowed claims. Absent such information, we are unable to make any recommendations concerning your demands.

Based upon the foregoing, absent any actual evidence of protectable intellectual property rights, your demands are respectfully denied. If, however, you have any evidence regarding actual acquisition of a protectable right, please let us know.

Very truly yours,


Peter W. Schulz
Of
GRECO TRAFICANTE & EDWARDS

PJS:nrs

cc: Mark Ellis, President and CEO, Figi, LLC

Exhibit 6



December 6, 2004
VIA FACSIMILE

John L. Welch
Counsel
Boston Office
617/832-1258
jwelch@foleyhoag.com

Peter J. Schultz, Esq.
Greco Traficante & Edwards
555 West Beech Street, Suite 500
San Diego, CA 92101

Re: QSL Corporation - ceramic cell phone holders


Dear Mr. Schultz:

We have your letter of November 30, 2004, responding to my letter of November 24.

Your discussion of trade dress confuses *de facto* functionality with *de jure* functionality. Our view of the trade dress issue remains unchanged.

As to the patent infringement issue, as soon as the patent issues we will let you know. Meanwhile, your client proceeds at its peril.

Yours very truly,


John L. Welch

JLW/jwl

I. (a) PLAINTIFFS

FIGI ACQUISITION COMPANY, LLC

DEFENDANTS

QSL CORPORATION

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Peter J. Schulz, Esq.
GRECO TRAFICANTE & EDWARDS
555 West Beech Street, Suite 500
San Diego, CA 92101
(619) 234-3660

ATTORNEYS (IF KNOWN)
John L. Welch, Esq.
FOLEY & HOAG, LLP
Seaport World Trade Center West
155 Seaport Blvd.
Boston, MA 92210-2600 (617) 832-1258

II. BASIS OF JURISDICTION

(PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.

Declaratory Relief of Patent Invalidity and Noninfringement (35 U.S.C. sections 102-103)

V. NATURE OF SUIT

(PLACE AN 'X' IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<table border="0"><tr><td>PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury</td><td>PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</td></tr></table>	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 831 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability					

VI. ORIGIN

(PLACE AN 'X' IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removal from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

Docket Number

DATE
December 28, 2004

SIGNATURE OF ATTORNEY OF RECORD
Peter J. Schulz

Peter J. Schulz, Esquire, State Bar No. 167646
LAW OFFICES
GRECO TRAFICANTE & EDWARDS
555 WEST BEECH STREET, SUITE 500
SAN DIEGO, CALIFORNIA 92101
(619) 234-3660/FAX: (619) 234-0626

Attorneys for Plaintiff FIGI ACQUISITION, LLC

FILED
04 DEC 28 PM 3:49

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'04 CV 2579 JM

(AJB)

FIGI ACQUISITION COMPANY, LLC, a) Civil Action No.
Delaware Limited Liability)
Company,)

Plaintiff,)

DEMAND FOR TRIAL BY JURY

vs.)

QSL CORPORATION, INC., a)
Massachusetts Corporation,)

Defendant.

Plaintiff FIGI ACQUISITION COMPANY, LLC, hereby demands trial
by jury in this action.

DATED: December 28, 2004

Respectfully submitted,

GRECO TRAFICANTE & EDWARDS

By:

Peter J. Schulz, Esquire
Attorneys for Plaintiff
FIGI ACQUISITION, LLC

Peter J. Schulz, Esquire, State Bar No. 167646
LAW OFFICES
GRECO TRAFICANTE & EDWARDS
555 WEST BEECH STREET, SUITE 500
SAN DIEGO, CALIFORNIA 92101
(619) 234-3660/FAX: (619) 234-0626

FILED

05 FEB -2 PM 4:06

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiff FIGI ACQUISITION, LLC

BY:

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FIGI ACQUISITION COMPANY, LLC, a) Civil Action No. 04CV2579JM (AJB)
Delaware Limited Liability)
Company,)

Plaintiff,)

vs.)

QSL CORPORATION, INC., a)
Massachusetts Corporation; CKO)
DESIGNS, INC., a Massachusetts)
Corporation; and KEVIN J. QUINN,)
an individual,)

Defendants.)

FIRST AMENDED COMPLAINT FOR:

- 1) **DECLARATORY RELIEF OF
PATENT INVALIDITY AND
NONINFRINGEMENT; AND**
- 2) **DECLARATORY RELIEF OF NON-
INFRINGEMENT OF TRADE DRESS**

Plaintiff, FIGI ACQUISITION COMPANY, LLC, alleges as follows:

THE PARTIES

1. Plaintiff FIGI ACQUISITION COMPANY, LLC, (hereinafter "FIGI") is a Delaware Limited Liability Company, doing business in the State of California, with its principal place of business located within the State of California.

2. QSL CORPORATION, (hereinafter "QSL") is a corporation, incorporated under the laws of the State of Massachusetts, with

1 its principal place of business located within the State of
2 Massachusetts.

3 3. CKO DESIGNS, INC., (hereinafter "CKO") is a corporation,
4 incorporated under the laws of the State of Massachusetts, with
5 its principal place of business located within the State of
6 Massachusetts.

7 4. KEVIN J. QUINN (hereinafter "QUINN") is an individual
8 residing in Methuen, Massachusetts.

9
10 **JURISDICTION AND VENUE**

11 5. This is an action seeking declaratory relief regarding
12 the validity of an alleged United States Patent as well as
13 declaration of noninfringement of an alleged United States Patent.
14 As such, the claims herein alleged, and described more fully
15 herein, arise under federal law and involve federal questions as
16 to each parties' rights and available remedies, pursuant to the
17 Acts of Congress relating to patents. Jurisdiction therefore
18 exists pursuant to 28 U.S.C. § 1338(a)-(b).

19 6. Personal jurisdiction and venue in the United States
20 District Court for the Southern District of California are proper,
21 as both Plaintiff and Defendant conduct business in the Southern
22 District of California.

23 **FACTUAL ALLEGATIONS**

24 7. Plaintiff designs, manufactures, and distributes a
25 product line known as Ceramic Cell Phone Holders. Ceramic Cell
26 Phone Holders are decorative ceramic art with the functional
27 capacity of being able to hold a cell phone with an opening below,

1 which allows for the charger cord of the phone to go unseen and
2 still provide charging features for the phone. The decorative
3 holders are similar in shape to cell phone "base chargers" offered
4 by the many manufacturers of cell phones, but are intended to be
5 more decorative. Pictures of Plaintiff's Ceramic Cell Phone
6 Holders from Plaintiff's catalog are attached hereto as **Exhibit 1**.

7 8. Defendants allegedly design and market ceramic
8 accessories, including ceramic cell phone holders, marketed under
9 the name PHONE WHERE. A photocopy provided to Plaintiff by
10 counsel for Defendants, depicting its generic, non-decorative
11 ceramic cell phone holder, is attached hereto as **Exhibit 2**.

12 9. On November 17, 2004, Defendant QSL CORPORATION sent a
13 cease-and-desist letter to Plaintiff regarding its sales of its
14 Ceramic Cell Phone Holders. QSL based this demand to cease and
15 desist on its claim of trade dress protection over the shape of
16 the cell phone holder, along with unspecified patent protection
17 over the cell phone holder's design and/or utility. A copy of
18 QSL's cease-and-desist letter is attached hereto as **Exhibit 3**.

19 10. On November 19, 2004, Plaintiff responded to QSL's
20 cease-and-desist demand on the basis that QSL had not provided any
21 evidence of ownership of protectable intellectual property rights,
22 or any useful information that would allow Plaintiff to analyze
23 the demand. A copy of Plaintiff's 11/19/04 letter is attached
24 hereto as **Exhibit 4**. Further information was again requested on
25 November 30, 2004. See **Exhibit 5**.

26 11. On December 6, 2004, QSL responded by continuing to
27 assert trade dress rights and unspecified patent protection

1 without providing any further information, and advised Plaintiff
 2 that its continued sales would be "at its peril." A true and
 3 correct copy of QSL's December 6, 2004, letter is attached hereto
 4 as **Exhibit 6**.

5 12. On January 25, 2005, QSL demanded that Plaintiff FIGI
 6 cease and desist the further import, make, use or sale of the
 7 following FIGI products:

8	Vineyard Cell Phone Holder	CEL-VIN-101
9	Roses Cell Phone Holder	CEL-ROS-101
10	Butterfly Cell Phone Holder	CEL-BTF-101
11	Fishing Cell Phone Holder	CEL-FSH-101
12	Teddy Bear Cell Phone Holder	CEL-TBR-101
13	Cat Cell Phone Holder	CEL-CAT-102
14	Sailing Cell Phone Holder	CEL-SLG-101
15	Hummingbird Cell Phone Holder	CEL-HBD-101
16	Golf Cell Phone Holder	CEL-GLF-101

17 13. Enclosed with this January 25, 2005, cease and desist
 18 letter was a copy of US Design Patent D501,205, which issued that
 19 same day, and which QSL CORPORATION had referred to in previous
 20 correspondence. A copy of the January 25, 2005, cease and desist
 21 letter and corresponding US Patent D501,205 is attached hereto as
 22 **Exhibit 7**.

23 14. On January 25, 2005, Defendants furthermore alleged that
 24 other products manufactured, advertised, and/or sold by Plaintiff
 25 were also infringing on Defendants' US Design Patent D501,205.

26 15. Defendant KEVIN J. QUINN is the inventor identified on
 27 U.S. Design Patent US D501,205 issued January 25, 2005. The

1 patent identifies Defendant CKO DESIGNS, INC. as the assignee.
2 QSL has failed, in all of its correspondence, to identify the
3 relationship between CKO DESIGNS, INC. and KEVIN J. QUINN, other
4 than to state that QSL CORPORATION was the owner of the 205 design
5 patent.

6 16. In light of Defendants' unspecified allegations of trade
7 dress infringement, allegations of patent infringement, and threat
8 of litigation, Plaintiff requires a judicial declaration from this
9 Court that its Ceramic Cell Phone Holders do not infringe any
10 intellectual property rights of Defendants, and that Defendants'
11 U.S. Patent D501,205 is invalid.

12 **ACTUAL CONTROVERSY**

13 17. An actual controversy has arisen and now exists between
14 the parties as to: (a) the validity of U.S. Patent D501,205; (b)
15 whether Plaintiff has infringed U.S. Patent D501,205; (c) the
16 validity of Defendants' alleged trade dress, if any, over the
17 shape of its ceramic cell phone holder; and (d) whether Plaintiff
18 has infringed Defendants' alleged trade dress.

19 18. Accordingly, Plaintiff desires a judicial declaration by
20 this Court as to each parties' rights.

21 19. A declaratory judgment is necessary in that Plaintiff
22 contends, and Defendants deny, that: (a) U.S. Patent D501,205 is
23 invalid; (b) Plaintiff's products do not infringe U.S. Patent
24 D501,205; (c) Defendants do not own protectable trade dress over
25 the shape of their ceramic cell phone holder; and (d) Plaintiff
26 has not infringed any trade dress rights of Defendants.

27 **PRAYER FOR DECLARATORY JUDGMENT**

1 WHEREFORE, Plaintiff prays for a declaratory judgment against
2 Defendants as follows:

- 3 1. That U.S. Patent D501,205 is invalid;
4 2. That Plaintiff has not infringed, nor has it ever sold
5 any product that infringes, U.S. Patent D501,205;
6 3. That the shape of Defendants' ceramic cell phone holder
7 is not protectable trade dress;
8 4. That Plaintiff has not infringed Defendants' alleged
9 trade dress;
10 5. That Plaintiff be awarded its costs, expenses, and if
11 provided for by law, its attorney's fees; and
12 4. For such other and further relief as the Court deems
13 just and proper.

14 DATED: February 1, 2005

GRECO TRAFICANTE & EDWARDS

15
16 By: 

Peter J. Schulz, Esquire
Attorneys for Plaintiff
FIGI ACQUISITION, LLC

17
18
19
20
21
22
23
24
25
26 F:\FIGI\FIG068\Pleadings\1st Amended Complaint.wpd

Exhibit 1

Ceramic Cell Phone Holders

CEL-E4D: 30 PC. CELL PHONE HOLDER PROGRAM WITH COUNTER DISPLAY — \$170.00
 CONSISTS OF 3 EACH OF 10 STYLES PLUS DISPLAY, INCLUDING 3 CAT CELL PHONE HOLDERS @ NO CHARGE.
 (Western sold separately)

CEL-E4D



Each Ceramic Cell Phone Holder comes packaged in a Figi box with photo label.



80-CELL

1-2000 ①
 COUNTER DISPLAY
 12" x 20"

80-CELL



A CEL-ROS-101

3-500 ③

ROSES - Ceramic

2.75" x 4.75" x 3.75"

CEL-ROS-101



B CEL-BTF-101

3-500 ③

BUTTERFLIES - Ceramic

2.75" x 4.75" x 3.75"

CEL-BTF-101



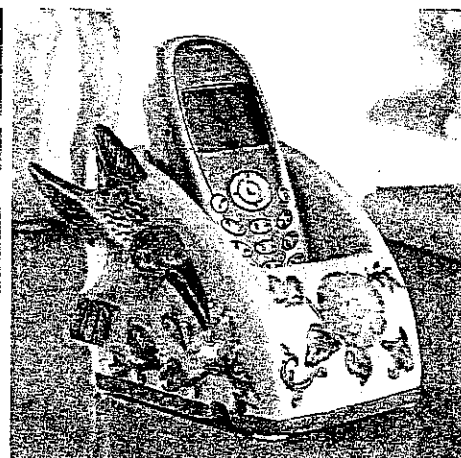
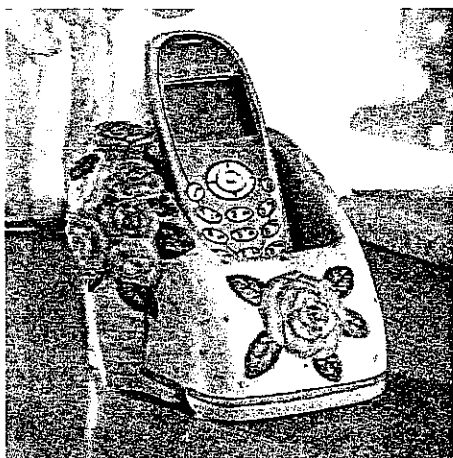
C CEL-HBD-101

3-500 ③

HUMMINGBIRD - Ceramic

2.75" x 4.75" x 3.75"

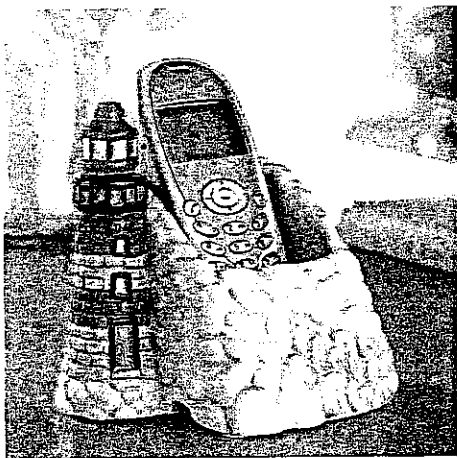
CEL-HBD-101



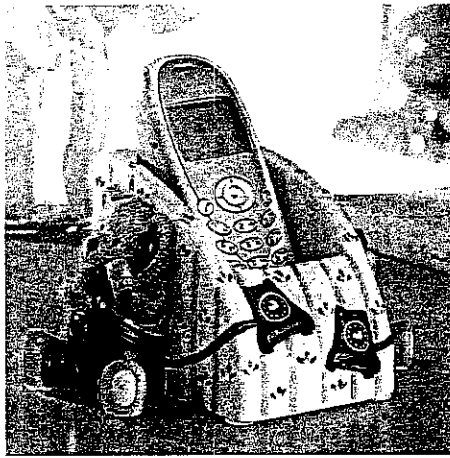
CALL TOLL FREE: 800-678-FIGI

www.figi.net

D CEL-SLG-101
3-500 ③
LIGHTHOUSE - Ceramic
2.75" x 4.75" x 3.75"
CEL-SLG-101
0 92626 48150 5



H CEL-TBR-101
3-500 ③
TALKING TEDDYBEARS - Ceramic
2.75" x 4.75" x 3.75"
CEL-TBR-101
0 92626 48161 5



E CEL-CAT-102
3-500 ③ ★★
CAT - Ceramic
2.75" x 4.75" x 3.75"
CEL-CAT-102
0 92626 48152 3



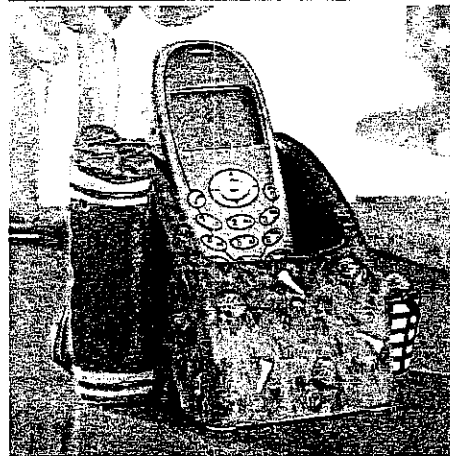
I CEL-VIN-101
3-500 ③
VINEYARD WINE - Ceramic
2.75" x 4.75" x 3.75"
CEL-VIN-101
0 92626 48151 4



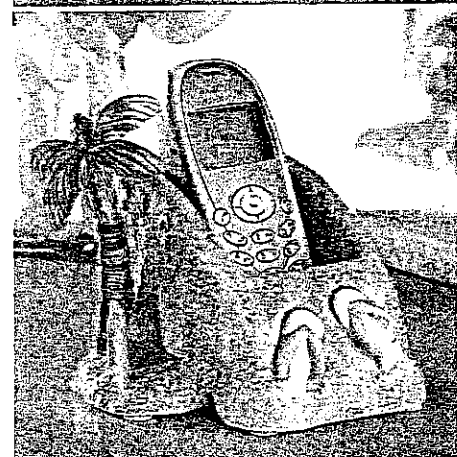
F CEL-FSH-101
3-500 ③
FISHING - Ceramic
2.75" x 4.75" x 3.75"
CEL-FSH-101
0 92626 48156 1



J CEL-GLF-101
3-500 ③
GOLF - Ceramic
2.75" x 4.75" x 3.75"
CEL-GLF-101
0 92626 48149 3



G CEL-TRP-101
3-500 ③
TROPICAL - Ceramic
2.75" x 4.75" x 3.75"
CEL-TRP-101
0 92626 48159 2



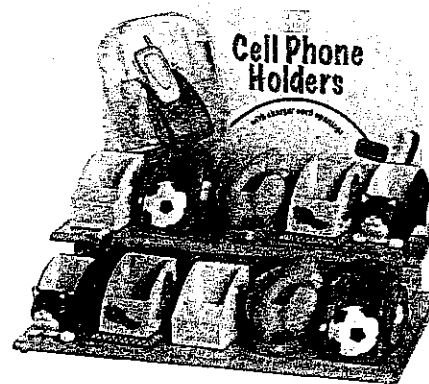
K CEL-WST-101
3-500
WESTERN - Ceramic
2.75" x 4.75" x 3.75"
Western sold separately.
CEL-WST-101
0 92626 48160 8

Resin Cell Phone Holders

CELR-ASD: 15 PC. RESIN CELL PHONE HOLDER PROGRAM
WITH COUNTER DISPLAY — \$95.00
CONSISTS OF 3 EACH OF 5 STYLES PLUS DISPLAY, INCLUDING
3 CAT CELL PHONE HOLDERS @ NO CHARGE.
(Western sold separately)



80-CELL
1-2000 ①
COUNTER DISPLAY
12" x 20"

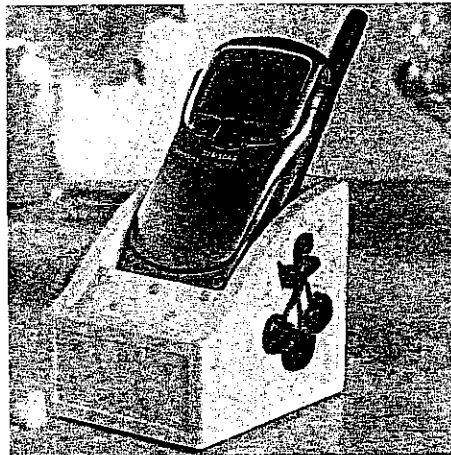


A CEL-CAT-103
3-500 ③ ★★★
CAT
4.5" x 3" x 6"
CEL-CAT-103

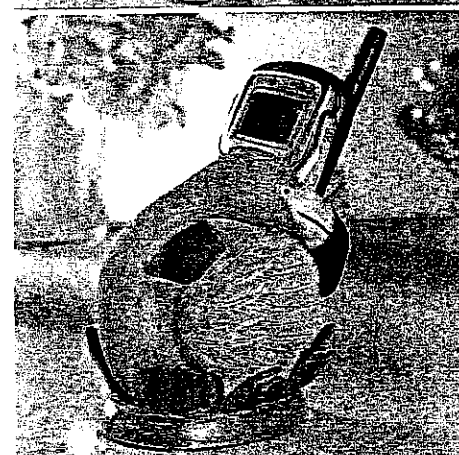


Each Ceramic Cell
Phone Holder comes
packaged in a Figi box
with photo label.

B CEL-CHR-101
3-500 ③
CHERRIES
3.25" x 2.75" x 3.75"
CEL-CHR-101



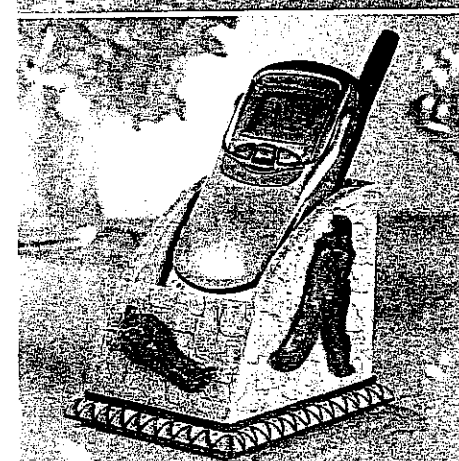
C CEL-FLM-101
3-500 ③
FLAMINGO
4.5" x 3.5" x 4.5"
CEL-FLM-101



D CEL-SPR-101
3-500 ③
ALL SPORT
4" x 4" x 4.25"
CEL-SPR-101



E CEL-SWT-101
3-500 ③
SOUTHWEST
3.5" x 3.25" x 4.25"
CEL-SWT-101



F CEL-WST-102
3-500
WESTERN
3.25" x 3" x 3.5"
Western sold
separately.
CEL-WST-102



CELL PHONE HOLDERS

Exhibit 2

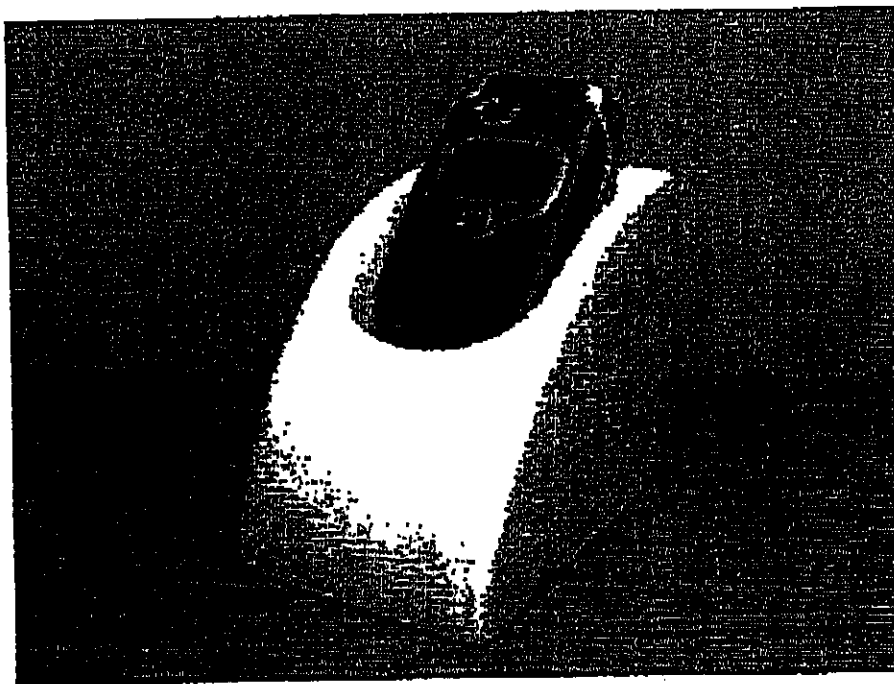


Exhibit 3



**FOLEY
HOAG** LLP
ATTORNEYS AT LAW

Fax

Date: November 17, 2004

To: Figi, Inc.

Fax #: 619-262-3808

Confirm#: 800-678-3444

Client Matter#: 23424-800

From: John L. Welch

Sender's Number: 617-832-1258

User #: 7242

Total Pages Sent (including Cover Sheet): 5

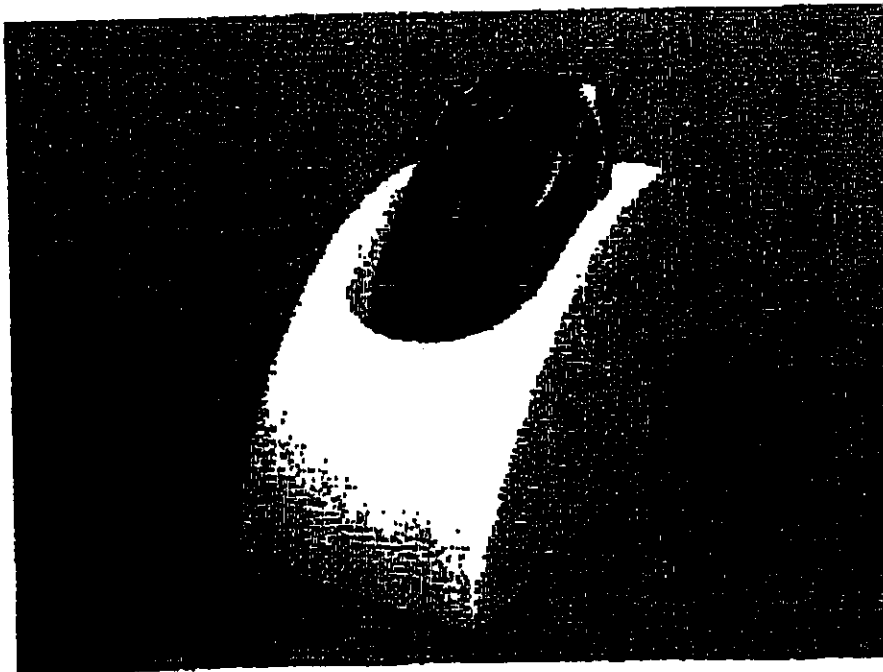
Office: Boston

Message

IMPORTANT - PLEASE READ
THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION PLEASE TELEPHONE THE SENDER.

Seaport World Trade Center West | 165 Seaport Blvd. | Boston, MA 02210-2800 | TEL: 617.832.1000 / FAX: 617.832.7000
Foley Hoag LLP BOSTON WASHINGTON, DC www.foleyhoag.com





**FOLEY
HOAG LLP**
ATTORNEYS AT LAW

John L. Welch
Counsel
Boston Office
617/632-1258
jwelch@foleyhoag.com

November 17, 2004

Figi, LLC
3636 Gateway Center Avenue
San Diego, CA 92102

Re: Ceramic Cell Phone Holders


Dear Sir or Madam:

This firm serves as intellectual property counsel to QSL Corporation of Dracut, Massachusetts. QSL designs and markets ceramic candle accessories and other household products, under the names WAXCESSORIES and INSIGHTS. Among the products that it created and now sells is a ceramic cell phone holder marketed under the trademark PHONE WHERE. A photograph of its product is enclosed.

It has just come to our attention that your company is offering for sale cell phone holders that are undoubtedly copied from our client's proprietary PHONE WHERE design. Several of the many variations of your company's product are depicted in the attached photographs. Our client is the owner of trademark rights in the overall shape of its cell phone holder, and furthermore will be receiving patent protection on its product in the near future.

We strongly urge your company to immediately cease and desist from all further sales of the copied cell phone holder, and to confirm same in writing. We look forward to your prompt response.

Yours very truly,


John L. Welch

JLW/jw
enclosures





Exhibit 4

Clyde Case, Jr.
Paul A. Traficante
Michael M. Edwards
Peter J. Schulz
Jon S. Brick

Philip M. McKenney
Scott B. Hilberg
Stephen F. Yurich
Craig A. Weeber
Bay Baniadam
Lalcaque Grad*
Brandy P. Tyler
Christopher D. Shurland

*Also Admitted in Arizona & Nevada

Case 1:05-cv-10395-NG Document 11-5 Filed 03/09/2005 Page 2 of 15
GILCO TRAFICANTE & EDWARDS

A Professional Corporation
555 West Beech Street, Suite 500
San Diego, CA 92101

Northern California Office
1415 Court Street
Redding, CA 96001

Of Counsel
Stanley J. Wezelman
Phillip H. Howard

Legal Administrator
Lisa M. Class

Telephone
(619) 234-3660
Facsimile
(619) 234-0626

www.gtclaw.com
email: info@gtclaw.com

November 19, 2004

Via Facsimile & Mail

John L. Welch, Esquire
FOLEY & HOAG, LLP
Seaport World Trade Center West
155 Seaport Blvd.
Boston, MA 02210-2600

Re: OSL CORPORATION v. FIGI, LLC
Ceramic Cell Phone Holders
Our File No.: FIG-068

Dear Mr. Welch:

The undersigned serves as legal counsel to Figi, LLC.
Please direct all future communications regarding the above
referenced matter to my attention.

I am in receipt of your letter dated November 17, 2004.
First of all, I am unable to tell from your letter exactly what
intellectual property rights you are claiming. Your letter
refers to the trademark PHONE WHERE. However, Figi does not use
that term in any way, shape or form in connection with its
products. Therefore, you have no trademark infringement claim
arising out of your pending trademark for that term.

Second, you claim that you have a patent application pending
for this cell phone holder product. Please provide me with the
patent number, and any and all correspondence or applications for
that patent protection, as we seriously question the validity of
any such patent.

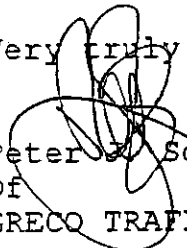
Third, you fail to set forth any information to support a
claim for copyright infringement, or any other infringement of
intellectual property rights because you have not provided any

John L. Welch, Esquire
FOLEY & HOAG, LLP
November 19, 2004
Page 2

evidence that you own any enforceable intellectual property rights. To the extent you have any copyright registrations, please forward those to my attention as well, or, at least, please provide me with your date of first publication of this particular product and evidence of same.

Based upon the foregoing, we view your demand for cease and desist as completely lacking in merit and substance. As such, we respectfully reject any and all demands contained within your November 17, 2004, letter. If you have any evidence you believe may cause us to reconsider that position, please forward that information to my attention forthwith. In the meantime, we reserve all rights, and waive none.

Very truly yours,


Peter J. Schulz
Of
GRECO TRAFICANTE & EDWARDS

PJS:nrs

cc: Clyde C. Greco, Jr., Esquire (via fax & mail)
Mark Ellis, President and CEO, Figi, LLC (via fax & mail)

Exhibit 5

Clyde C. Co., Jr.
Paul A. Traficante
Michael M. Edwards
Peter J. Schulz
Jon S. Brick

Philip M. McKenney
Scott B. Hilberg
Stephen F. Yurich
Craig A. Weeber
Bay Baniadam
Lalcaque Grad*
Brandy P. Tyler
Christopher D. Shurland

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of Counsel
Stanley J. Wezelman
Phillip H. Howard

Legal Administrator
Lisa M. Class

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Facsimile
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www.gtclaw.com
email: info@gtclaw.com

*Also Admitted in Arizona & Nevada

November 30, 2004

Via Facsimile & Mail

John L. Welch, Esquire
FOLEY & HOAG, LLP
Seaport World Trade Center West
155 Seaport Blvd.
Boston, MA 02210-2600

**Re: OSL CORPORATION v. FIGI, LLC
Ceramic Cell Phone Holders
Our File No.: FIG-068**

Dear Mr. Welch:

I am in receipt of your letter dated November 24, 2004. Thank you for clarifying that QSL Corporation is not asserting any claims for copyright infringement or infringement of QSL's PHONE WHERE trademark.

As I appreciate your allegation, QSL is claiming trade dress protection for the overall shape of its cell phone holder. However, QSL fails to present any evidence to support ownership of any such enforceable trade dress rights. For example, what is the date of creation? How was it created? What evidence of secondary meaning exists? What is it about the product that is non-functional and protectable? The cell phone holder which was pictured in your November 17, 2004, letter is generic and purely functional. In fact, review of your client's item side by side with our client's item suggests that the only possible similarities deal with the functional aspects of the product, and the overall shape and appearance of the two products are completely different.

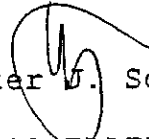
With respect to your alleged pending patent application, which you state has been allowed, and will soon issue, we again request that you provide us with the application serial number. As I am sure you are aware, even if you were to pursue litigation

John L. Welch, Esquire
November 30, 2004
Page 2

against our client regarding patent infringement, you would not be able to seek any damages based on continued sale of the product after notice of the allowance of the patent without providing us with the allowed claims. Absent such information, we are unable to make any recommendations concerning your demands.

Based upon the foregoing, absent any actual evidence of protectable intellectual property rights, your demands are respectfully denied. If, however, you have any evidence regarding actual acquisition of a protectable right, please let us know.

Very truly yours,


Peter J. Schulz
Of
GRECO TRAFICANTE & EDWARDS

PJS:nrs

cc: Mark Ellis, President and CEO, Figi, LLC

Exhibit 6



December 6, 2004
VIA FACSIMILE

John L. Welch
Counsel
Boston Office
617/832-1258
jwelch@foleyhoag.com

Peter J. Schultz, Esq.
Greco Trafficante & Edwards
555 West Beech Street, Suite 500
San Diego, CA 92101

Re: QSL Corporation - ceramic cell phone holders

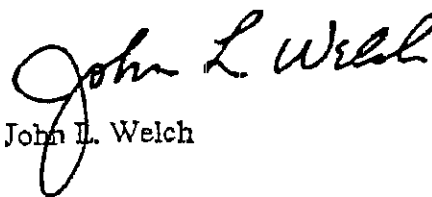
Dear Mr. Schultz:

We have your letter of November 30, 2004, responding to my letter of November 24.

Your discussion of trade dress confuses *de facto* functionality with *de jure* functionality. Our view of the trade dress issue remains unchanged.

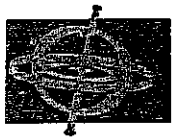
As to the patent infringement issue, as soon as the patent issues we will let you know. Meanwhile, your client proceeds at its peril.

Yours very truly,


John L. Welch

JLW/jwl

Exhibit 7



**FOLEY
HOAG** LLP
ATTORNEYS AT LAW

January 25, 2005
VIA FACSIMILE

John L. Welch
Counsel
Boston Office
617/832-1258
jwelch@foleyhoag.com

Peter J. Schultz, Esq.
Greco Traficante & Edwards
555 West Beech Street, Suite 500
San Diego, CA 92101

Re: QSL Corporation - ceramic cell phone holders

Dear Mr. Schultz:

You requested that we notify you and your client, Figi LLC, upon issuance of the patent on QSL's mobile phone holder. We are pleased to enclose herewith a copy of U.S. Design Patent D501,205, which issued today.

To date our client is aware of the following Figi products which, we believe, infringe upon that patent. If your client continues to import, make, use, or sell these products, or any other products that infringe the patent, our client will take such steps as are necessary to enforce its patent rights.

Vineyard Cell Phone Holder	CEL-VIN-101
Roses Cell Phone Holder	CEL-ROS-101
Butterfly Cell Phone Holder	CEL-BTF-101
Fishing Cell Phone Holder	CEL-FSH-101
Teddy Bear Cell Phone Holder	CEL-TBR-101
Cat Cell Phone Holder	CEL-CAT-102
Sailing Cell Phone Holder	CEL-SLG-101
Hummingbird Cell Phone Holder	CEL-HBD-101
Golf Cell Phone Holder	CEL-GLF-101

Please immediately confirm that your client has ceased its infringing activities as of today.

Yours very truly,



John L. Welch

JLW/jw
enclosure (U.S. Design Patent D501,205)



US00D501205S

(12) **United States Design Patent** (10) Patent No.: **US D501,205 S**
Quinn (45) Date of Patent: **** Jan. 25, 2005**

(54) **HOLDER/CHARGING STAND FOR A MOBILE PHONE OR THE LIKE**

(75) Inventor: **Kevin J. Quinn, Methuen, MA (US)**

(73) Assignee: **CKO Designs, Inc., Dracut, MA (US)**

(**) Term: **14 Years**

(21) Appl. No.: **29/201,860**

(22) Filed: **Mar. 22, 2004**

(51) LOC (7) Cl. **14-03**

(52) U.S. Cl. **D14/253**

(58) Field of Search **D14/137, 434, D14/138, 447, 148, 147, 149-151, 140-142, 240, 241, 251-253, 451, 218; 379/426, 449, 419, 420.01-420.04, 428.01-428.04, 440, 454, 455, 446; 455/550.1-90.3; D13/107, 108; 224/670, 197, 271; D3/218; 248/221.11, 231.81; 320/110-115**

(56) **References Cited**

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FOREIGN PATENT DOCUMENTS

WO DM/061400 * 7/2002

* cited by examiner

Primary Examiner—Jeffrey Asch

(74) Attorney, Agent, or Firm—John L. Welch

(57)

CLAIM

The ornamental design for a holder/charging stand for a mobile phone or the like, as shown and described.

DESCRIPTION

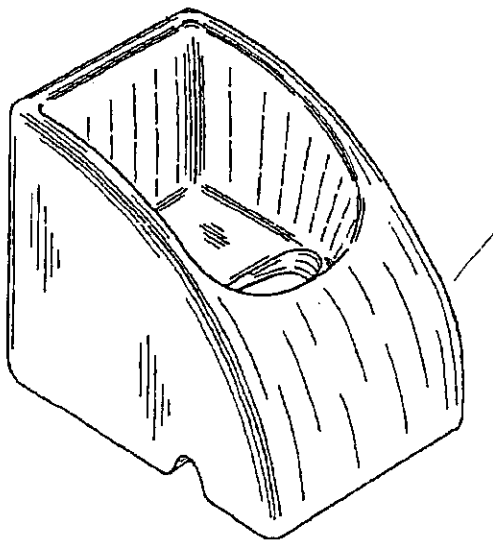
FIG. 1 is perspective view of the holder/charging stand for a mobile phone or the like according to our new design, as seen from the left front corner thereof.

FIG. 2 is right side elevational rear view thereof, the left side elevational view being a mirror image thereof.

FIG. 3 is a front elevational view thereof; and,

FIG. 4 is a top plan view thereof.

1 Claim, 1 Drawing Sheet



United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FIGI ACQUISITION COMPANY, LLC, a Delaware
Limited Liability Company,

Plaintiff,

vs

QSL CORPORATION, INC., a Massachusetts
Corporation; CKO DESIGNS, INC., a
Massachusetts Corporation; and KEVIN J.
QUINN, an individual,

Defendants.

SUMMONS IN A CIVIL ACTION

Case No. 04CV2579 JM (AJB)

ON FIRST AMENDED COMPLAINT

TO: (Name and Address of Defendant)

QSL CORPORATION, INC., a Massachusetts corporation

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon
PLAINTIFF'S ATTORNEY

Peter J. Schulz, Esquire
GRECO TRAFICANTE & EDWARDS
555 West Beech Street, Ste. 500
San Diego, CA 92101
Tel: (619) 234-3660/Fax: (619) 234-0646

An answer to the complaint which is herewith served upon you, within twenty (20) days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by
default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK
C. Silva

By _____, Deputy Clerk

FEB 2 2005

DATE

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FIGI ACQUISITION COMPANY, LLC, a Delaware
Limited Liability Company,

Plaintiff,

vs

QSL CORPORATION, INC., a Massachusetts
Corporation; CKO DESIGNS, INC., a
Massachusetts Corporation; and KEVIN J.
QUINN, an individual,

Defendants.

SUMMONS IN A CIVIL ACTION

Case No. 04CV2579 JM (AJB)

ON FIRST AMENDED COMPLAINT

TO: (Name and Address of Defendant)

CKO DESIGNS, INC., a Massachusetts Corporation

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon
PLAINTIFF'S ATTORNEY

Peter J. Schulz, Esquire
GRECO TRAFICANTE & EDWARDS
555 West Beech Street, Ste. 500
San Diego, CA 92101
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W. Samuel Hamrick, Jr.

CLERK
C. Silva

FEB 2 2005

DATE

By _____, Deputy Clerk

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FIGI ACQUISITION COMPANY, LLC, a Delaware
Limited Liability Company,

Plaintiff,

vs

QSL CORPORATION, INC., a Massachusetts
Corporation; CKO DESIGNS, INC., a
Massachusetts Corporation; and KEVIN J.
QUINN, an individual,

Defendants.

SUMMONS IN A CIVIL ACTION

Case No. 04CV2579 JM (AJB)

ON FIRST AMENDED COMPLAINT

TO: (Name and Address of Defendant)

KEVIN J. QUINN, an individual

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon
PLAINTIFF'S ATTORNEY

Peter J. Schulz, Esquire
GRECO TRAFICANTE & EDWARDS
555 West Beech Street, Ste. 500
San Diego, CA 92101
Tel: (619) 234-3660/Fax: (619) 234-0646

An answer to the complaint which is herewith served upon you, within twenty (20) days after
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default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK
C. Silva

FEB 2 2005

DATE

By _____, Deputy Clerk

Clyde C. Greco, Jr.
Paul A. Traficante
Michael M. Edwards
Peter J. Schulz
Jon S. Brick

Philip M. McKenney
Scott B. Hilberg
Stephen F. Yurcich
Craig A. Weeber
Bay Baniadam
Laleaque Grad*
Brandy P. Tyler

*Also Admitted in Arizona & Nevada

Law Offices
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San Diego, CA 92101

Northern California Office
9555 Crossroads Drive
Redding, CA 96003

Of Counsel
Stanley J. Wezelman
Phillip H. Howard
Legal Administrator
Lisa M. Class

Telephone
(619) 234-3660
Facsimile
(619) 234-0626

www.gtclaw.com
email: info@gtclaw.com

February 4, 2005

John L. Welch, Esquire
FOLEY & HOAG, LLP
Seaport World Trade Center West
155 Seaport Blvd.
Boston, MA 92210-2600

Re: OSL CORPORATION v. FIGI, LLC
Ceramic Cell Phone Holders
Our File No.: FIG-068

Dear Mr. Welch:

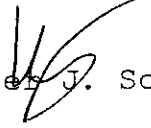
I am in receipt of your letter dated January 25, 2005. Previously, based upon your December 6, 2004, letter, we filed an action for declaratory relief in the United States District Court for the Southern District of California on December 28, 2004. We held off from serving that matter due to our belief that your client had abandoned its position, having heard nothing. However, based upon the allegations set forth in your January 25, 2005, letter, as well as the issuance of U.S. Design Patent D501,205, we have amended the complaint, and are presenting that to you, along with a Waiver and Acknowledgment of Service. I have included three separate service packages and three separate Waivers, one for each defendant. If you are not authorized to accept service or are unable to accept service on behalf of any of these entities, please afford me the courtesy of advising us as soon as possible so that we can arrange for personal service of the summons and complaint.

Greco Traficante & Edwards

John L. Welch, Esquire
February 4, 2005
Page 2

In the meantime, if you have any questions or concerns regarding this or any other issue, please let me know.

Very truly yours,


Peter J. Schulz
Of
GRECO TRAFICANTE & EDWARDS

PJS:nrs
Enclosures

cc: Clyde C. Greco, Jr., Esquire (w/o encls.)
Mark Ellis, President and CEO, Figi, LLC (w/o encls.)

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONSTO: PETER J. SCHULZ, ESQUIRE

(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, KEVIN J. QUINN

(DEFENDANT NAME)

, acknowledge receipt of your request
that I waive service of summons in the action FIGI ACQUISITION v. OSL CORPORATION, et al.,
(CAPTION OF ACTION)

of which is case number 04CV2579 JM (AJB) in the United States District Court for the
(DOCKET NUMBER)

SOUTHERN District of CALIFORNIA

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after February 4, 2005,
(DATE REQUEST WAS SENT)
or within 90 days after that date if the request was sent outside the United States.

(DATE)

(SIGNATURE)

Printed/Typed Name: _____

As _____

(TITLE)

of _____

(CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONSTO: PETER J. SCHULZ, ESQUIRE
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)I, CKO DESIGNS, INC., acknowledge receipt of your request
(DEFENDANT NAME)that I waive service of summons in the action FIGI ACQUISITION v. QSL CORPORATION, et al.,
(CAPTION OF ACTION)of which is case number 04CV2579 JM (AJB) in the United States District Court for the
(DOCKET NUMBER)SOUTHERN District of CALIFORNIA

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

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(DATE REQUEST WAS SENT)
or within 90 days after that date if the request was sent outside the United States.

(DATE)_____
(SIGNATURE)

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)**Duty to Avoid Unnecessary Costs of Service of Summons**

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

AO 399 (Rev. 10/95)

WAIVER OF SERVICE OF SUMMONSTO: PETER J. SCHULZ, ESQUIRE
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)I, OSL CORPORATION, INC., acknowledge receipt of your request
(DEFENDANT NAME)that I waive service of summons in the action FIGI ACQUISITION v. OSL CORPORATION, et al.,
(CAPTION OF ACTION)of which is case number 04CV2579 JM (AJB) in the United States District Court for the
(DOCKET NUMBER)SOUTHERN District of CALIFORNIA

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after February 4, 2005,
(DATE REQUEST WAS SENT)
or within 90 days after that date if the request was sent outside the United States.

(DATE)

(SIGNATURE)

Printed/Typed Name: _____

As _____

(TITLE)

of _____

(CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

Peter J. Schulz, Esquire, State Bar No. 167646
LAW OFFICES
GRECO TRAFICANTE & EDWARDS
555 WEST BEECH STREET, SUITE 500
SAN DIEGO, CALIFORNIA 92101
(619) 234-3660/FAX: (619) 234-0626

FILED

05 FEB -2 PM 4:06

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiff FIGI ACQUISITION, LLC

BY:

DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FIGI ACQUISITION COMPANY, LLC, a)	Civil Action No. 04CV2579JM (AJB)
Delaware Limited Liability)	
Company,)	
)	FIRST AMENDED COMPLAINT FOR:
Plaintiff,)	
vs.)	1) DECLARATORY RELIEF OF
)	PATENT INVALIDITY AND
)	NONINFRINGEMENT; AND
QSL CORPORATION, INC., a)	2) DECLARATORY RELIEF OF NON-
Massachusetts Corporation; CKO)	INFRINGEMENT OF TRADE DRESS
DESIGNS, INC., a Massachusetts)	
Corporation; and KEVIN J. QUINN,)	
an individual,)	
)	
Defendants.)	

Plaintiff, FIGI ACQUISITION COMPANY, LLC, alleges as follows:

THE PARTIES

1. Plaintiff FIGI ACQUISITION COMPANY, LLC, (hereinafter "FIGI") is a Delaware Limited Liability Company, doing business in the State of California, with its principal place of business located within the State of California.

2. QSL CORPORATION, (hereinafter "QSL") is a corporation, incorporated under the laws of the State of Massachusetts, with

1 its principal place of business located within the State of
2 Massachusetts.

3 3. CKO DESIGNS, INC., (hereinafter "CKO") is a corporation,
4 incorporated under the laws of the State of Massachusetts, with
5 its principal place of business located within the State of
6 Massachusetts.

7 4. KEVIN J. QUINN (hereinafter "QUINN") is an individual
8 residing in Methuen, Massachusetts.

9
10 **JURISDICTION AND VENUE**

11 5. This is an action seeking declaratory relief regarding
12 the validity of an alleged United States Patent as well as
13 declaration of noninfringement of an alleged United States Patent.
14 As such, the claims herein alleged, and described more fully
15 herein, arise under federal law and involve federal questions as
16 to each parties' rights and available remedies, pursuant to the
17 Acts of Congress relating to patents. Jurisdiction therefore
18 exists pursuant to 28 U.S.C. § 1338(a)-(b).

19 6. Personal jurisdiction and venue in the United States
20 District Court for the Southern District of California are proper,
21 as both Plaintiff and Defendant conduct business in the Southern
22 District of California.

23 **FACTUAL ALLEGATIONS**

24 7. Plaintiff designs, manufactures, and distributes a
25 product line known as Ceramic Cell Phone Holders. Ceramic Cell
26 Phone Holders are decorative ceramic art with the functional
27 capacity of being able to hold a cell phone with an opening below,

1 which allows for the charger cord of the phone to go unseen and
2 still provide charging features for the phone. The decorative
3 holders are similar in shape to cell phone "base chargers" offered
4 by the many manufacturers of cell phones, but are intended to be
5 more decorative. Pictures of Plaintiff's Ceramic Cell Phone
6 Holders from Plaintiff's catalog are attached hereto as **Exhibit 1**.

7 8. Defendants allegedly design and market ceramic
8 accessories, including ceramic cell phone holders, marketed under
9 the name PHONE WHERE. A photocopy provided to Plaintiff by
10 counsel for Defendants, depicting its generic, non-decorative
11 ceramic cell phone holder, is attached hereto as **Exhibit 2**.

12 9. On November 17, 2004, Defendant QSL CORPORATION sent a
13 cease-and-desist letter to Plaintiff regarding its sales of its
14 Ceramic Cell Phone Holders. QSL based this demand to cease and
15 desist on its claim of trade dress protection over the shape of
16 the cell phone holder, along with unspecified patent protection
17 over the cell phone holder's design and/or utility. A copy of
18 QSL's cease-and-desist letter is attached hereto as **Exhibit 3**.

19 10. On November 19, 2004, Plaintiff responded to QSL's
20 cease-and-desist demand on the basis that QSL had not provided any
21 evidence of ownership of protectable intellectual property rights,
22 or any useful information that would allow Plaintiff to analyze
23 the demand. A copy of Plaintiff's 11/19/04 letter is attached
24 hereto as **Exhibit 4**. Further information was again requested on
25 November 30, 2004. See **Exhibit 5**.

26 11. On December 6, 2004, QSL responded by continuing to
27 assert trade dress rights and unspecified patent protection

1 without providing any further information, and advised Plaintiff
2 that its continued sales would be "at its peril." A true and
3 correct copy of QSL's December 6, 2004, letter is attached hereto
4 as **Exhibit 6**.

5 12. On January 25, 2005, QSL demanded that Plaintiff FIGI
6 cease and desist the further import, make, use or sale of the
7 following FIGI products:

8	Vineyard Cell Phone Holder	CEL-VIN-101
9	Roses Cell Phone Holder	CEL-ROS-101
10	Butterfly Cell Phone Holder	CEL-BTF-101
11	Fishing Cell Phone Holder	CEL-FSH-101
12	Teddy Bear Cell Phone Holder	CEL-TBR-101
13	Cat Cell Phone Holder	CEL-CAT-102
14	Sailing Cell Phone Holder	CEL-SLG-101
15	Hummingbird Cell Phone Holder	CEL-HBD-101
16	Golf Cell Phone Holder	CEL-GLF-101

17 13. Enclosed with this January 25, 2005, cease and desist
18 letter was a copy of US Design Patent D501,205, which issued that
19 same day, and which QSL CORPORATION had referred to in previous
20 correspondence. A copy of the January 25, 2005, cease and desist
21 letter and corresponding US Patent D501,205 is attached hereto as
22 **Exhibit 7**.

23 14. On January 25, 2005, Defendants furthermore alleged that
24 other products manufactured, advertised, and/or sold by Plaintiff
25 were also infringing on Defendants' US Design Patent D501,205.

26 15. Defendant KEVIN J. QUINN is the inventor identified on
27 U.S. Design Patent US D501,205 issued January 25, 2005. The
28

1 patent identifies Defendant CKO DESIGNS, INC. as the assignee.
2 QSL has failed, in all of its correspondence, to identify the
3 relationship between CKO DESIGNS, INC. and KEVIN J. QUINN, other
4 than to state that QSL CORPORATION was the owner of the 205 design
5 patent.

6 16. In light of Defendants' unspecified allegations of trade
7 dress infringement, allegations of patent infringement, and threat
8 of litigation, Plaintiff requires a judicial declaration from this
9 Court that its Ceramic Cell Phone Holders do not infringe any
10 intellectual property rights of Defendants, and that Defendants'
11 U.S. Patent D501,205 is invalid.

12 **ACTUAL CONTROVERSY**

13 17. An actual controversy has arisen and now exists between
14 the parties as to: (a) the validity of U.S. Patent D501,205; (b)
15 whether Plaintiff has infringed U.S. Patent D501,205; (c) the
16 validity of Defendants' alleged trade dress, if any, over the
17 shape of its ceramic cell phone holder; and (d) whether Plaintiff
18 has infringed Defendants' alleged trade dress.

19 18. Accordingly, Plaintiff desires a judicial declaration by
20 this Court as to each parties' rights.

21 19. A declaratory judgment is necessary in that Plaintiff
22 contends, and Defendants deny, that: (a) U.S. Patent D501,205 is
23 invalid; (b) Plaintiff's products do not infringe U.S. Patent
24 D501,205; (c) Defendants do not own protectable trade dress over
25 the shape of their ceramic cell phone holder; and (d) Plaintiff
26 has not infringed any trade dress rights of Defendants.

27 **PRAYER FOR DECLARATORY JUDGMENT**

1 WHEREFORE, Plaintiff prays for a declaratory judgment against
2 Defendants as follows:

- 3 1. That U.S. Patent D501,205 is invalid;
4 2. That Plaintiff has not infringed, nor has it ever sold
5 any product that infringes, U.S. Patent D501,205;
6 3. That the shape of Defendants' ceramic cell phone holder
7 is not protectable trade dress;
8 4. That Plaintiff has not infringed Defendants' alleged
9 trade dress;
10 5. That Plaintiff be awarded its costs, expenses, and if
11 provided for by law, its attorney's fees; and
12 4. For such other and further relief as the Court deems
13 just and proper.

14 DATED: February 1, 2005

GRECO TRAFICANTE & EDWARDS

16 By: 

17 Peter J. Schulz, Esquire
18 Attorneys for Plaintiff
FIGI ACQUISITION, LLC

26 F:\FIGI\FIG068\Pleadings\1st Amended Complaint.wpd

Exhibit 1

Ceramic Cell Phone Holders

CEL-E4D: 30 PC. CELL PHONE HOLDER PROGRAM WITH COUNTER DISPLAY — \$170.00
 CONSISTS OF 3 EACH OF 10 STYLES PLUS DISPLAY, INCLUDING 3 CAT CELL PHONE HOLDERS @ NO CHARGE.
 (Western sold separately)

CEL-E4D



Each Ceramic Cell Phone Holder comes packaged in a Figi box with photo label.



80-CELL
 1-2000 ①
 COUNTER DISPLAY
 12" x 20"



A CEL-ROS-101
 3-500 ③
 ROSES - Ceramic
 2.75" x 4.75" x 3.75"

CEL-ROS-101



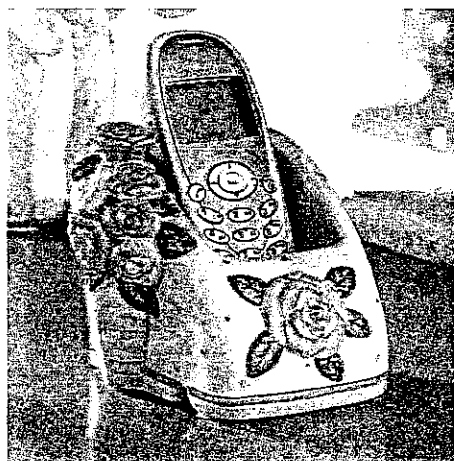
B CEL-BTF-101
 3-500 ③
 BUTTERFLIES - Ceramic
 2.75" x 4.75" x 3.75"

CEL-BTF-101



C CEL-HBD-101
 3-500 ③
 HUMMINGBIRD - Ceramic
 2.75" x 4.75" x 3.75"

CEL-HBD-101



CALL TOLL FREE: 800-678-FIGI

www.figi.net

CERAMIC PHONE HOLDERS

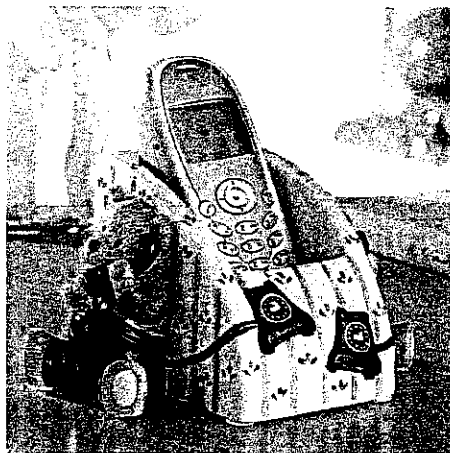
43

444
TOLL FREE 800-678-FIGI

D CEL-SLG-101
3-500 ③
LIGHTHOUSE - Ceramic
2.75" x 4.75" x 3.75"
CEL-SLG-101
0 92626 48150 9



H CEL-TBR-101
3-500 ③
TALKING TEDDYBEARS - Ceramic
2.75" x 4.75" x 3.75"
CEL-TBR-101
0 92626 48161 5



E CEL-CAT-102
3-500 ③ ★★
CAT - Ceramic
2.75" x 4.75" x 3.75"
CEL-CAT-102
0 92626 48152 3



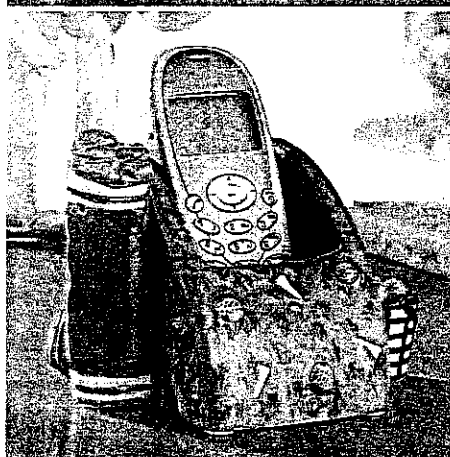
I CEL-VIN-101
3-500 ③
VINEYARD WINE - Ceramic
2.75" x 4.75" x 3.75"
CEL-VIN-101
0 92626 48151 6



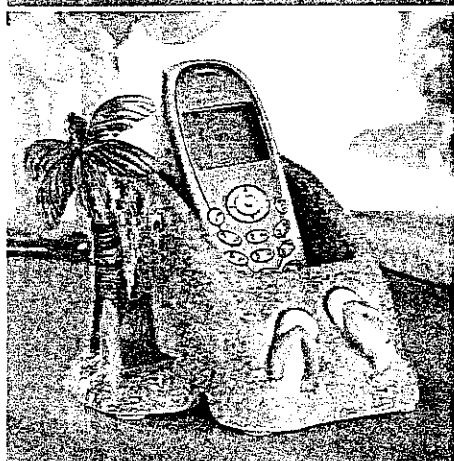
F CEL-FSH-101
3-500 ③
FISHING - Ceramic
2.75" x 4.75" x 3.75"
CEL-FSH-101
0 92626 48150 1



J CEL-GLF-101
3-500 ③
GOLF - Ceramic
2.75" x 4.75" x 3.75"
CEL-GLF-101
0 92626 48149 3



G CEL-TRP-101
3-500 ③
TROPICAL - Ceramic
2.75" x 4.75" x 3.75"
CEL-TRP-101
0 92626 48159 2



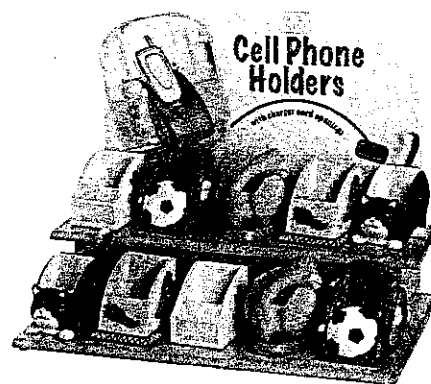
K CEL-WST-101
3-500
WESTERN - Ceramic
2.75" x 4.75" x 3.75"
Western sold separately.
CEL-WST-101
0 92626 48160 8

Resin Cell Phone Holders

CELR-ASD: 15 PC. RESIN CELL PHONE HOLDER PROGRAM
WITH COUNTER DISPLAY — \$95.00
CONSISTS OF 3 EACH OF 5 STYLES PLUS DISPLAY, INCLUDING
3 CAT CELL PHONE HOLDERS @ NO CHARGE.
(Western sold separately)

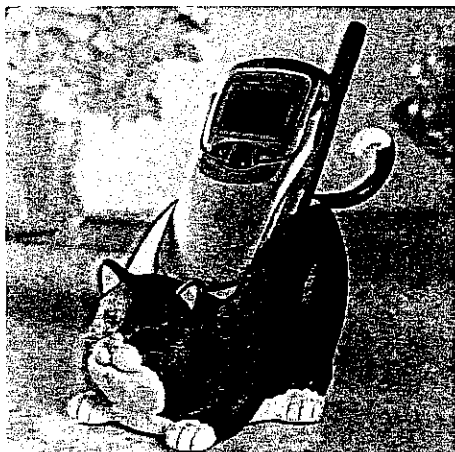


80-CELL
1-2000 ①
COUNTER DISPLAY
12" x 20"

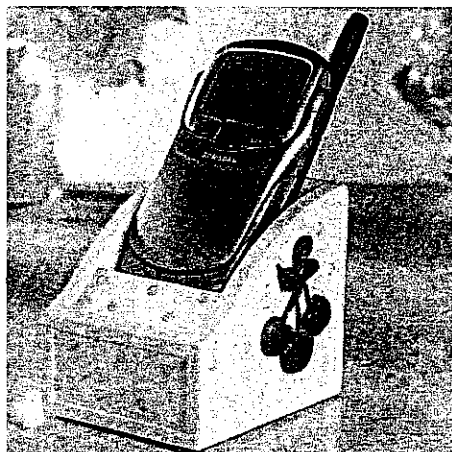


Each Ceramic Cell
Phone Holder comes
packaged in a Figi box
with photo label.

A CEL-CAT-103
3-500 ③ ★★ ★
CAT
4.5" x 3" x 6"
CEL-CAT-103



B CEL-CHR-101
3-500 ③
CHERRIES
3.25" x 2.75" x 3.75"
CEL-CHR-101



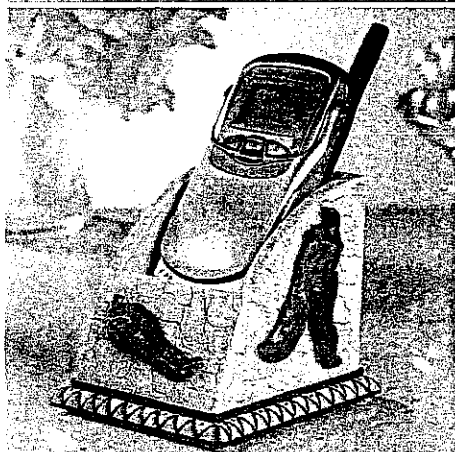
C CEL-FLM-101
3-500 ③
FLAMINGO
4.5" x 3.5" x 4.5"
CEL-FLM-101



D CEL-SPR-101
3-500 ③
ALL SPORT
4" x 4" x 4.25"
CEL-SPR-101



E CEL-SWT-101
3-500 ③
SOUTHWEST
3.5" x 3.25" x 4.25"
CEL-SWT-101



Western sold separately



F CEL-WST-102
3-500
WESTERN
3.25" x 3" x 3.5"
Western sold
separately.
CEL-WST-102

CALL TOLL FREE: 800-678-FIGI www.figi.net

CELL PHONE HOLDERS

Exhibit 2

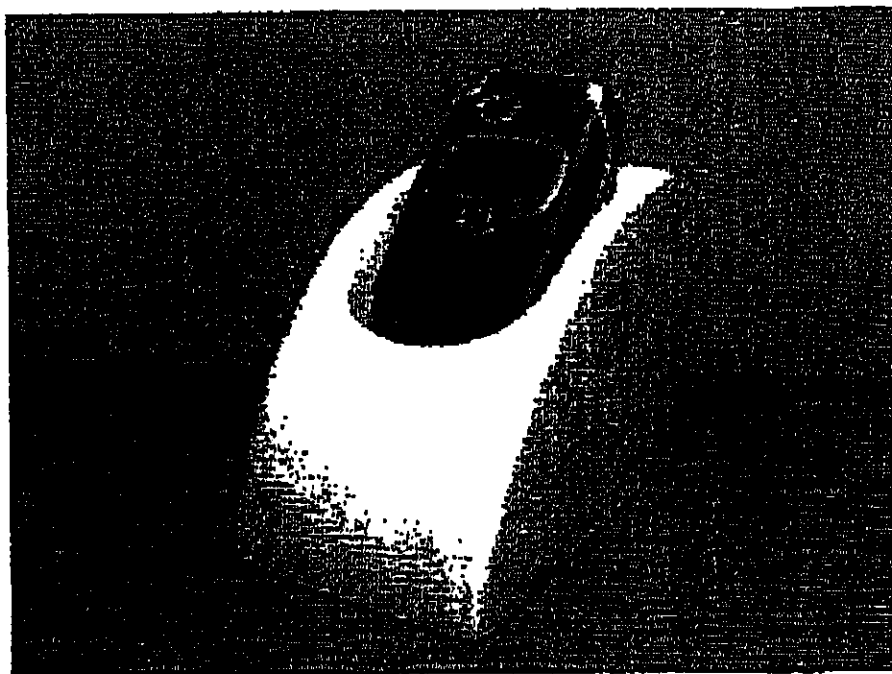


Exhibit 3



**FOLEY
HOAG** LLP
ATTORNEYS AT LAW

Fax

Date: November 17, 2004

To: Figi, Inc.

Fax #: 619-262-3508

Confirm#: 800-878-3444

Client Matter#: 23424-900

From: John L. Welch

Sender's Number: 617-832-1258

User #: 7242

Total Pages Sent (Including Cover Sheet): 5

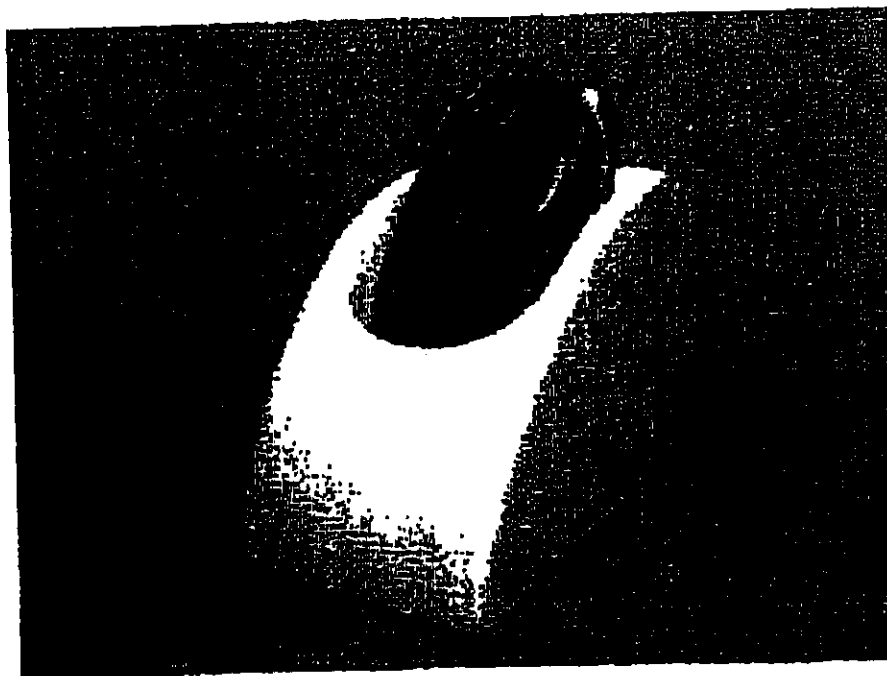
Office: Boston

Message

IMPORTANT -- PLEASE READ

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AN AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION PLEASE TELEPHONE THE SENDER.





John L. Welch
Counsel
Boston Office
617/832-1258
jwelch@foleyhoag.com

November 17, 2004

Figi, LLC
3636 Gateway Center Avenue
San Diego, CA 92102

Re: Ceramic Cell Phone Holders

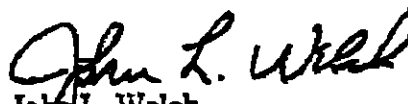
Dear Sir or Madam:

This firm serves as intellectual property counsel to QSL Corporation of Dracut, Massachusetts. QSL designs and markets ceramic candle accessories and other household products, under the names WAXCESSORIES and INSIGHTS. Among the products that it created and now sells is a ceramic cell phone holder marketed under the trademark PHONE WHERE. A photograph of its product is enclosed.

It has just come to our attention that your company is offering for sale cell phone holders that are undoubtedly copied from our client's proprietary PHONE WHERE design. Several of the many variations of your company's product are depicted in the attached photographs. Our client is the owner of trademark rights in the overall shape of its cell phone holder, and furthermore will be receiving patent protection on its product in the near future.

We strongly urge your company to immediately cease and desist from all further sales of the copied cell phone holder, and to confirm same in writing. We look forward to your prompt response.

Yours very truly,


John L. Welch

JLW/jw
enclosures

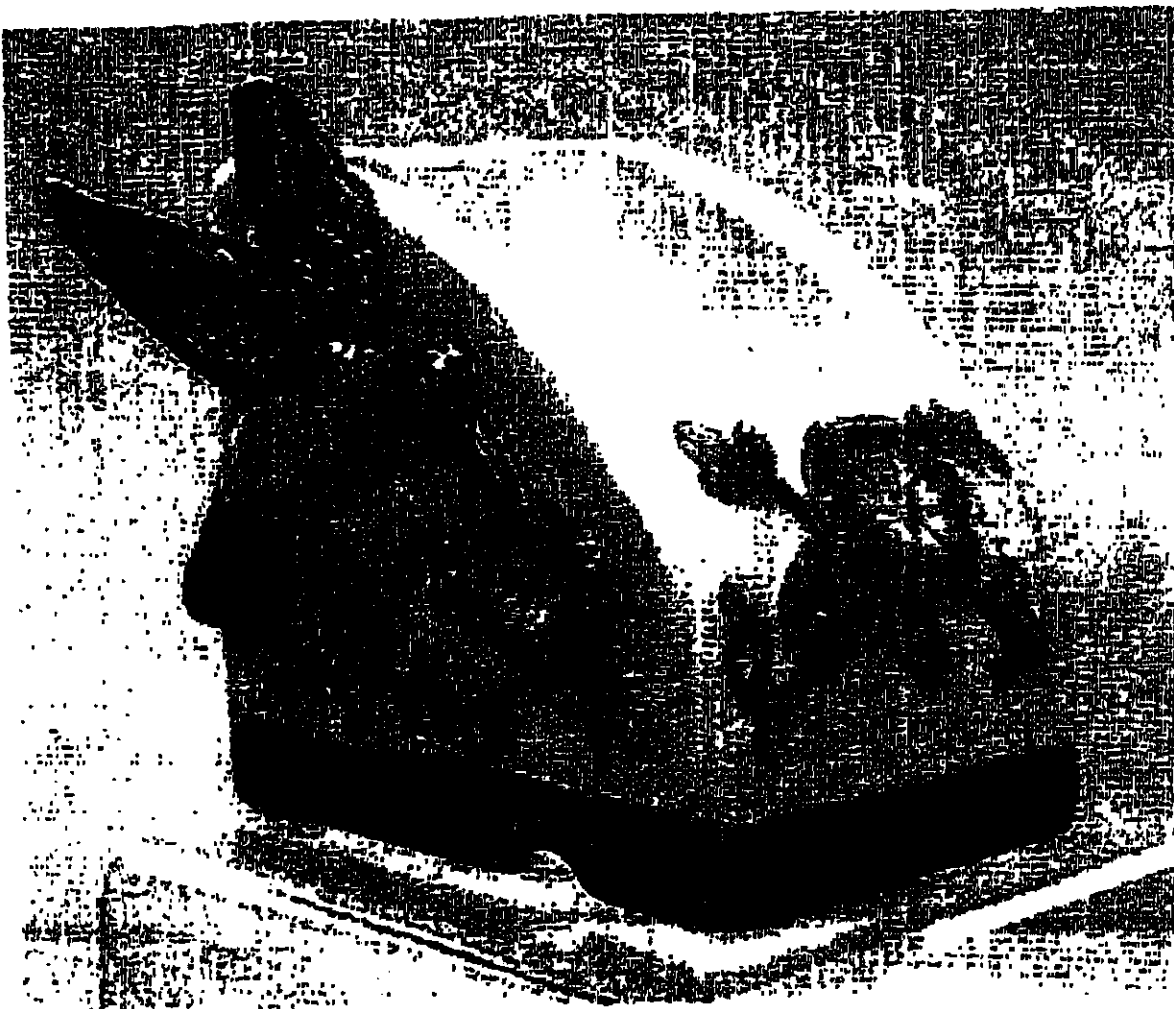




Exhibit 4

Case 1:05-cv-10395-NG Document 11-7 Filed 03/09/2005 Page 6 of 19
Clyde C. Grisco, Jr.
Paul A. Traficante
Michael M. Edwards
Peter J. Schulz
Jon S. Brick

Philip M. McKenney
Scott B. Hilberg
Stephen F. Yurcich
Craig A. Weeber
Bay Baniadam
Laleaque Grad*
Brandy P. Tyler
Christopher D. Shurland

*Also Admitted in Arizona & Nevada

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Stanley J. Wezelman
Phillip H. Howard

Legal Administrator
Lisa M. Class

Telephone
(619) 234-3660
Facsimile
(619) 234-0626

www.gtclaw.com
email: info@gtclaw.com

November 19, 2004

Via Facsimile & Mail

John L. Welch, Esquire
FOLEY & HOAG, LLP
Seaport World Trade Center West
155 Seaport Blvd.
Boston, MA 92210-2600

Re: OSL CORPORATION v. FIGI, LLC
Ceramic Cell Phone Holders
Our File No.: FIG-068

Dear Mr. Welch:

The undersigned serves as legal counsel to Figi, LLC. Please direct all future communications regarding the above referenced matter to my attention.

I am in receipt of your letter dated November 17, 2004. First of all, I am unable to tell from your letter exactly what intellectual property rights you are claiming. Your letter refers to the trademark PHONE WHERE. However, Figi does not use that term in any way, shape or form in connection with its products. Therefore, you have no trademark infringement claim arising out of your pending trademark for that term.

Second, you claim that you have a patent application pending for this cell phone holder product. Please provide me with the patent number, and any and all correspondence or applications for that patent protection, as we seriously question the validity of any such patent.

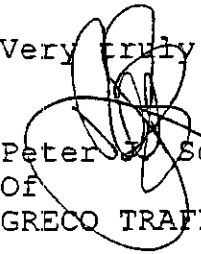
Third, you fail to set forth any information to support a claim for copyright infringement, or any other infringement of intellectual property rights because you have not provided any

John L. Welch, Esquire
FOLEY & HOAG, LLP
November 19, 2004
Page 2

evidence that you own any enforceable intellectual property rights. To the extent you have any copyright registrations, please forward those to my attention as well, or, at least, please provide me with your date of first publication of this particular product and evidence of same.

Based upon the foregoing, we view your demand for cease and desist as completely lacking in merit and substance. As such, we respectfully reject any and all demands contained within your November 17, 2004, letter. If you have any evidence you believe may cause us to reconsider that position, please forward that information to my attention forthwith. In the meantime, we reserve all rights, and waive none.

Very truly yours,


Peter J. Schulz
Of
GRECO TRAFICANTE & EDWARDS

PJS:nrs

cc: Clyde C. Greco, Jr., Esquire (via fax & mail)
Mark Ellis, President and CEO, Figi, LLC (via fax & mail)

Exhibit 5

Clyde C. Greco, Jr.
Paul A. Traficante
Michael M. Edwards
Peter J. Schulz
Jon S. Brick

Philip M. McKenney
Scott B. Hilberg
Stephen F. Yurich
Craig A. Weeber
Bay Baniadam
Lalcaque Grad*
Brandy P. Tyler
Christopher D. Shurland

*Also Admitted in Arizona & Nevada

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Law Offices
Of Counsel
Stanley J. Wezelman
Phillip H. Howard
Legal Administrator
Lisa M. Class
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Facsimile
(619) 234-0626

www.gtclaw.com
email: info@gtclaw.com

November 30, 2004

Via Facsimile & Mail

John L. Welch, Esquire
FOLEY & HOAG, LLP
Seaport World Trade Center West
155 Seaport Blvd.
Boston, MA 92210-2600

Re: OSL CORPORATION v. FIGI, LLC
Ceramic Cell Phone Holders
Our File No.: FIG-068

Dear Mr. Welch:

I am in receipt of your letter dated November 24, 2004. Thank you for clarifying that QSL Corporation is not asserting any claims for copyright infringement or infringement of QSL's PHONE WHERE trademark.

As I appreciate your allegation, QSL is claiming trade dress protection for the overall shape of its cell phone holder. However, QSL fails to present any evidence to support ownership of any such enforceable trade dress rights. For example, what is the date of creation? How was it created? What evidence of secondary meaning exists? What is it about the product that is non-functional and protectable? The cell phone holder which was pictured in your November 17, 2004, letter is generic and purely functional. In fact, review of your client's item side by side with our client's item suggests that the only possible similarities deal with the functional aspects of the product, and the overall shape and appearance of the two products are completely different.

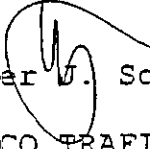
With respect to your alleged pending patent application, which you state has been allowed, and will soon issue, we again request that you provide us with the application serial number. As I am sure you are aware, even if you were to pursue litigation

John L. Welch, Esquire
November 30, 2004
Page 2

against our client regarding patent infringement, you would not be able to seek any damages based on continued sale of the product after notice of the allowance of the patent without providing us with the allowed claims. Absent such information, we are unable to make any recommendations concerning your demands.

Based upon the foregoing, absent any actual evidence of protectable intellectual property rights, your demands are respectfully denied. If, however, you have any evidence regarding actual acquisition of a protectable right, please let us know.

Very truly yours,


Peter J. Schulz
Of
GRECO TRAFICANTE & EDWARDS

PJS:nrs

cc: Mark Ellis, President and CEO, Figi, LLC

Exhibit 6



December 6, 2004
VIA FACSIMILE

John L. Welch
Counsel
Boston Office
617/832-1258
jwelch@foleyhoag.com

Peter J. Schultz, Esq.
Greco Trafficante & Edwards
555 West Beech Street, Suite 500
San Diego, CA 92101

Re: QSL Corporation - ceramic cell phone holders

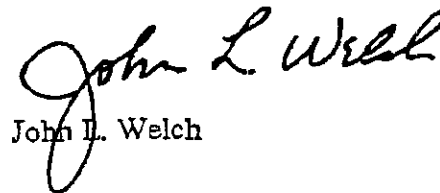
Dear Mr. Schultz:

We have your letter of November 30, 2004, responding to my letter of November 24.

Your discussion of trade dress confuses *de facto* functionality with *de jure* functionality. Our view of the trade dress issue remains unchanged.

As to the patent infringement issue, as soon as the patent issues we will let you know. Meanwhile, your client proceeds at its peril.

Yours very truly,


John L. Welch

JLW/jwl

Exhibit 7



**FOLEY
HOAG** LLP
ATTORNEYS AT LAW

January 25, 2005
VIA FACSIMILE

John L. Welch
Counsel
Boston Office
617/832-1258
jwelch@foleyhoag.com

Peter J. Schultz, Esq.
Greco Traficante & Edwards
555 West Beech Street, Suite 500
San Diego, CA 92101

Re: QSL Corporation - ceramic cell phone holders

Dear Mr. Schultz:

You requested that we notify you and your client, Figi LLC, upon issuance of the patent on QSL's mobile phone holder. We are pleased to enclose herewith a copy of U.S. Design Patent D501,205, which issued today.

To date our client is aware of the following Figi products which, we believe, infringe upon that patent. If your client continues to import, make, use, or sell these products, or any other products that infringe the patent, our client will take such steps as are necessary to enforce its patent rights.

Vineyard Cell Phone Holder	CEL-VIN-101
Roses Cell Phone Holder	CEL-ROS-101
Butterfly Cell Phone Holder	CEL-BTF-101
Fishing Cell Phone Holder	CEL-FSH-101
Teddy Bear Cell Phone Holder	CEL-TBR-101
Cat Cell Phone Holder	CEL-CAT-102
Sailing Cell Phone Holder	CEL-SLG-101
Hummingbird Cell Phone Holder	CEL-HBD-101
Golf Cell Phone Holder	CEL-GLF-101

Please immediately confirm that your client has ceased its infringing activities as of today.

Yours very truly,


John L. Welch

JLW/jw
enclosure (U.S. Design Patent D501,205)



US00D501205S

(12) United States Design Patent

Quinn

(10) Patent No.: US D501,205 S

(45) Date of Patent: ** Jan. 25, 2005

(54) HOLDER/CHARGING STAND FOR A MOBILE PHONE OR THE LIKE

(75) Inventor: Kevin J. Quinn, Methuen, MA (US)

(73) Assignee: CKO Designs, Inc., Dracut, MA (US)

(**) Term: 14 Years

(21) Appl. No.: 29/201,860

(22) Filed: Mar. 22, 2004

(51) LOC (7) Cl. 14-03

(52) U.S. Cl. D14/253

(58) Field of Search D14/137, 434,
 D14/138, 447, 148, 147, 149-151, 140-142,
 240, 241, 251-253, 451, 218; 379/426,
 449, 419, 420.01-420.04, 428.01-428.04,
 440, 454, 455, 446; 455/550.1-90.3; D13/107,
 108; 224/670, 197, 271; D3/218; 248/221.11,
 231.81; 320/110-115

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 D477,823 S * 7/2003 Lavello, Sr. D14/253
 D480,393 S * 10/2003 Toor et al. D14/253
 D486,786 S * 2/2004 Eroma et al. D13/108

FOREIGN PATENT DOCUMENTS

WO DM/061400 * 7/2002

* cited by examiner

Primary Examiner—Jeffrey Asch

(74) Attorney, Agent, or Firm—John L. Welch

(57)

CLAIM

The ornamental design for a holder/charging stand for a mobile phone or the like, as shown and described.

DESCRIPTION

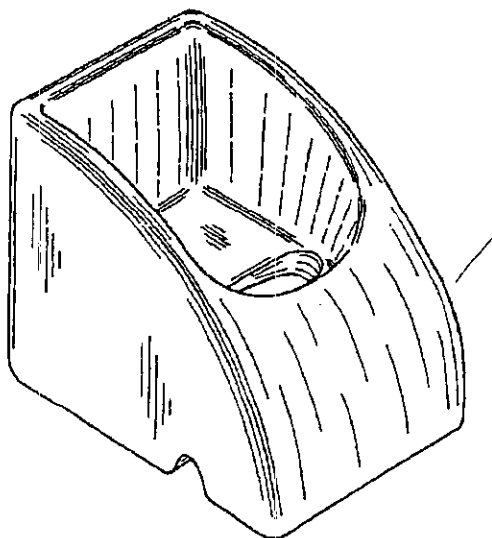
FIG. 1 is perspective view of the holder/charging stand for a mobile phone or the like according to our new design, as seen from the left front corner thereof.

FIG. 2 is right side elevational rear view thereof, the left side elevational view being a mirror image thereof.

FIG. 3 is a front elevational view thereof; and,

FIG. 4 is a top plan view thereof.

1 Claim, 1 Drawing Sheet



United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FIGI ACQUISITION COMPANY, LLC, a Delaware
Limited Liability Company,

Plaintiff,

vs

QSL CORPORATION, INC., a Massachusetts
Corporation; CKO DESIGNS, INC., a
Massachusetts Corporation; and KEVIN J.
QUINN, an individual,

Defendants.

SUMMONS IN A CIVIL ACTION

Case No. 04CV2579 JM (AJB)

ON FIRST AMENDED COMPLAINT

TO: (Name and Address of Defendant)

QSL CORPORATION, INC., a Massachusetts corporation

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon
PLAINTIFF'S ATTORNEY

Peter J. Schulz, Esquire
GRECO TRAFICANTE & EDWARDS
555 West Beech Street, Ste. 500
San Diego, CA 92101
Tel: (619) 234-3660/Fax: (619) 234-0646

An answer to the complaint which is herewith served upon you, within twenty (20) days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by
default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK
C. Silva

FEB 2 2005

DATE

By

, Deputy Clerk

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FIGI ACQUISITION COMPANY, LLC, a Delaware
Limited Liability Company,

Plaintiff,

vs

QSL CORPORATION, INC., a Massachusetts
Corporation; CKO DESIGNS, INC., a
Massachusetts Corporation; and KEVIN J.
QUINN, an individual,

Defendants.

SUMMONS IN A CIVIL ACTION

Case No. 04CV2579 JM (AJB)

ON FIRST AMENDED COMPLAINT

TO: (Name and Address of Defendant)

CKO DESIGNS, INC., a Massachusetts Corporation

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon
PLAINTIFF'S ATTORNEY

Peter J. Schulz, Esquire
GRECO TRAFICANTE & EDWARDS
555 West Beech Street, Ste. 500
San Diego, CA 92101
Tel: (619) 234-3660/Fax: (619) 234-0646

An answer to the complaint which is herewith served upon you, within twenty (20) days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by
default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK

C. Silva

FEB 2 2005

DATE

By _____, Deputy Clerk

United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

FIGI ACQUISITION COMPANY, LLC, a Delaware
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vs

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QUINN, an individual,

Defendants.

SUMMONS IN A CIVIL ACTION

Case No. 04CV2579 JM (AJB)

ON FIRST AMENDED COMPLAINT

TO: (Name and Address of Defendant)

KEVIN J. QUINN, an individual

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PLAINTIFF'S ATTORNEY

Peter J. Schulz, Esquire
GRECO TRAFICANTE & EDWARDS
555 West Beech Street, Ste. 500
San Diego, CA 92101
Tel: (619) 234-3660/Fax: (619) 234-0646

An answer to the complaint which is herewith served upon you, within twenty (20) days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by
default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

CLERK
C. Silva

FEB 2 2005

DATE

By _____, Deputy Clerk

03/01/2005 16:38

617-832-7

FOLEY HOAG LLP

PAGE 02/09

SAO 440 (Rev. 8/01) Summons to a Civil Action

UNITED STATES DISTRICT COURT

District of _____

OSL CORPORATION d/b/a WAXCESSORIES
CKQ DESIGNS, INC.

V.

SUMMONS IN A CIVIL ACTION

FIGI ACQUISITION COMPANY, LLC

CASE NUMBER:

05-10395 NG

TO: (Name and address of Defendant)

FIGI ACQUISITION COMPANY, LLC
3636 Gateway Center Drive
San Diego, California 92102

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

John L. Welch and Ian J. McLoughlin
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210-2600

an answer to the complaint which is served on you with this summons, within twenty (20) days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK

DATE

(By) DEPUTY CLERK



MAR 1 - 2005

SIGNED For ON
3/2/05
[Signature]

COPYUNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
CLERKS OFFICE

2005 FEB 29 P 3 02

QSL CORPORATION d/b/a WAXCESSORIES
and CKQ DESIGNS, INC.,

Plaintiffs,

v.

FIGI ACQUISITION COMPANY, LLC,

Defendant.

U.S. DISTRICT COURT
DISTRICT OF MASS.

Civil Action No.

05-10395 NGCOMPLAINT AND JURY DEMAND

Plaintiffs QSL CORPORATION d/b/a WAXCESSORIES and CKQ DESIGNS, INC., by their undersigned attorneys, by way of Complaint herein, allege as follows:

1. Plaintiff QSL CORPORATION d/b/a WAXCESSORIES is a Massachusetts corporation having a place of business at 20 Commercial Drive, Dracut, Massachusetts 01826.
2. Plaintiff CKQ DESIGNS, INC. is a Massachusetts corporation having a place of business at 20 Commercial Drive, Dracut, Massachusetts 01826.
3. On information and belief, Defendant FIGI ACQUISITION COMPANY, LLC is a Delaware Limited Liability company having a place of business at 3636 Gateway Center Drive, San Diego, California 92102, and is doing business in this judicial district.

4. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 in that the Complaint sets forth a count for patent infringement under Title 35 of the United States Code.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

6. Plaintiff QSL CORPORATION d/b/a WAXCESSORIES is the exclusive licensee, and Plaintiff CKQ Designs, Inc. is the assignee, of U.S. Patent No. 501, 205 entitled "Holder/Charging Stand for a Mobile Phone or the Like," which Patent duly issued on January 25, 2005 (the "'205 patent"). A true copy of the '205 Patent is attached hereto as Exhibit A.

7. Plaintiffs have the exclusive rights to make, use, offer for sale, and sell mobile phone holders and/or charging stands embodying the invention of the '205 Patent.

8. On information and belief, Defendant has been and is making, using, offering for sale, and and/or selling, mobile phone holders and/or charging stands embodying the invention of the '205 Patent, without authorization from Plaintiffs.

9. The aforesaid actions of Defendant have continued despite Defendant having actual notice of the '205 patent as of its date of issuance on January 25, 2005. On information and belief, such actions have been taken in willful and flagrant disregard of Plaintiffs' patent rights under the '205 patent.

US00D501205S

(12) **United States Design Patent** (10) Patent No.: **US D501,205 S**
Quinn (45) Date of Patent: **** Jan. 25, 2005**

(54) **HOLDER/CHARGING STAND FOR A MOBILE PHONE OR THE LIKE**
(75) Inventor: **Kevin J. Quinn, Methuen, MA (US)**
(73) Assignee: **CKO Designs, Inc., Dracut, MA (US)**
(**) Term: **14 Years**
(21) Appl. No.: **29/201,860**
(22) Filed: **Mar. 22, 2004**
(51) LOC (7) Cl.: **14-03**
(52) U.S. Cl.: **D14/253**
(58) Field of Search **D14/137, 434, D14/138, 447, 148, 149, 151, 140-142, 240, 241, 251-253, 451, 218, 379/426, 449, 419, 420.01-420.04, 428.01-428.04, 440, 454, 455, 446, 455/550.1-90.3, D13/107, 108, 224/670, 197, 271, D3/218, 248/221.11, 231.31, 320/110-115**

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FOREIGN PATENT DOCUMENTS

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Primary Examiner—Jeffrey Asch

(74) Attorney, Agent, or Firm—John L. Welch

(57) **CLAIM**

The ornamental design for a holder/charging stand for a mobile phone or the like, as shown and described.

DESCRIPTION

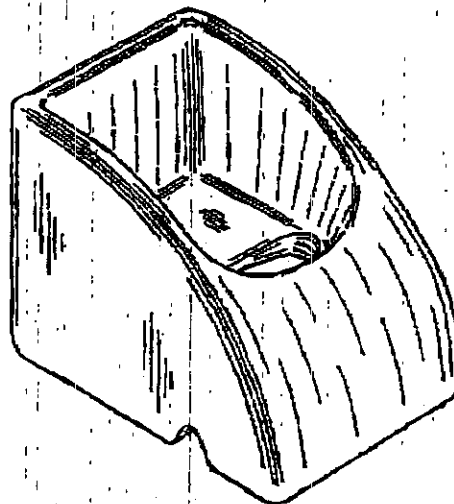
FIG. 1 is perspective view of the holder/charging stand for a mobile phone or the like according to our new design, as seen from the left front corner thereof.

FIG. 2 is right side elevational rear view thereof, the left side elevational view being a mirror image thereof.

FIG. 3 is a front elevational view thereof; and,

FIG. 4 is a top plan view thereof.

1 Claim, 1 Drawing Sheet



U.S. Patent

Jan. 25, 2005

US D501,205 S

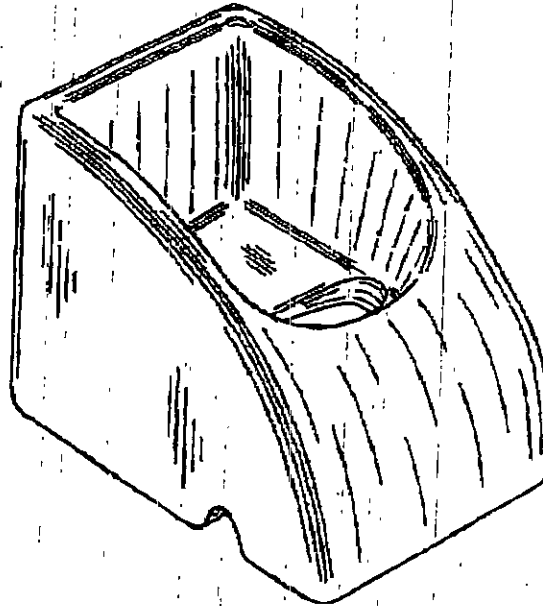


FIG. 1

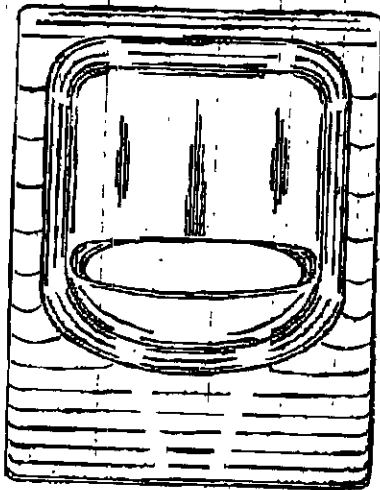


FIG. 4

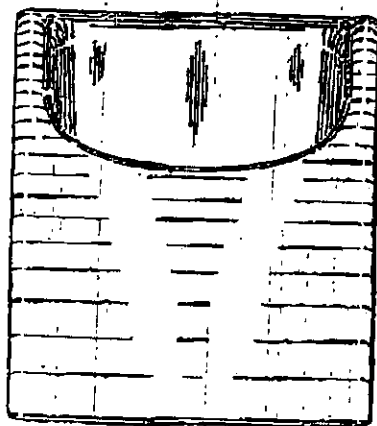


FIG. 3

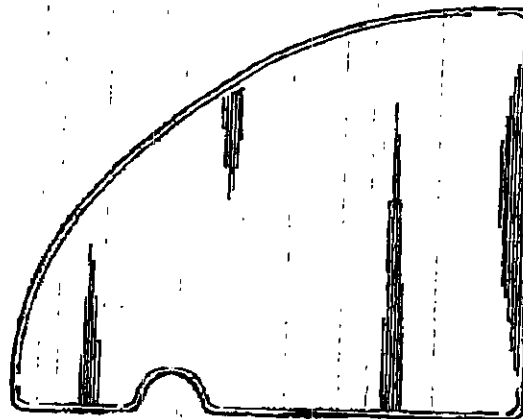


FIG. 2